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PRINCIPLES OF LABOR LEGISLATION

(REVISED EDITION)

BY

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AND

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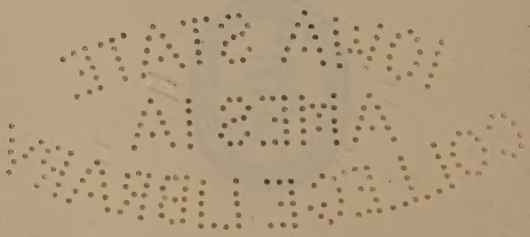

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PREFACE TO REVISED EDITION

America's first labor law was enacted ninety years ago, yet the bulk of our effective and, indeed, revolutionary labor legislation is the fruit of the past fifteen years. Since January, 1916, when this book was first offered to citizens and students, there have been remarkable developments. Despite a few temporary setbacks, a new sense of the worth, perhaps also of the power, of the ordinary man and woman of toil has influenced the thinking of lawmakers. Comparative indifference on the part of society to human welfare in industry has given way to a new and constructive course of social action. The result is written large upon the pages of the statute books.

The most important forward step in American labor legislation is that providing accident compensation for those injured in the course of employment. The second greatest advance has been in the provision for law enforcement. Both of these developments had their most significant beginnings as recently as 1911 with the first permanent adoption by the states of the principle of accident compensation, and the organization of the first modern state industrial commission. By 1926 workmen's accident compensation laws had been adopted in all of the states except five in the non-industrial South and in the District of Columbia. The United States government has protected its own half million civilian employees with a compensation act covering both accidental injuries and occupational diseases, which stands as a model to the states and to other countries. The industrial commission form of administration of labor laws —resting upon the new basis of scientific investigation of facts, representation of employer, employee, and the public, a trained personnel, and the substitution of administrative rules for legislative statutes—has been extensively adopted.

This same brief period has witnessed the well-nigh universal spread of laws placing maximum limits upon the length of the working day of women. Prohibition of some form of night

work has been written into the laws of more than a dozen states. Beginnings have been made in several states to abolish the seven-day working week. Railroading has been put upon the basic eight-hour day. Seamen have been made free men in a federal act to promote the safety of crews and passengers on the high seas. Official commissions in a dozen states have made comprehensive investigations pointing to the need of workmen's health insurance legislation. For a period during the war a national employment service was extended throughout the country. Mothers' pension laws have been enacted in forty-two states, and in 1926 by Congress for the District of Columbia. The federal government has enacted a comprehensive old age insurance law for its civilian employees. The federal taxing power has been successfully invoked to abolish a dreaded occupational disease. Minimum wage laws for women were within a dozen years adopted in fourteen states and the District of Columbia. Other progressive laws, as well as amendments strengthening and liberalizing existing statutes, have followed one another rapidly.

During the six years that have elapsed since the 1920 revision of this book appeared, the trend has been consistently forward. In addition to the continuous improvement and extension of outstanding measures just mentioned, there have been new and significant applications of the principles of protective legislation. Federal-state cooperation in the vocational rehabilitation of industrial cripples provided by Congress in 1920 has been adopted by forty states. Similar cooperation in the protection of maternity and infancy under a federal act of 1921 has been undertaken by forty-three states and Hawaii. Some states have provided in their workmen's accident compensation laws that in case a minor is injured while illegally employed his compensation award shall be doubled or trebled, a most effective measure not only for securing redress for the injured child but also for providing a strong incentive to comply with the child labor laws. Provisions have been made for occupational disease compensation in thirteen American compensation laws. Immigration has been radically restricted in congressional acts of 1921 and 1924. An attempt by Kansas to establish compulsory arbitration through a "court of industrial relations" aroused much discussion, but the plan was

frustrated by the highest court. A proposal for settling industrial disputes, inaugurated for the railroads in the Transportation Act of 1920, proved unsatisfactory to the bulk of the railroad workers and a considerable number of the managers, and it was replaced by the Railway Labor Act of 1926, a new and conspicuous experiment in giving legislative encouragement to collective bargaining and voluntary agreement in labor disputes.

Impressive beginnings have been made in old age pension legislation on the same principle as the successful mothers' pension laws. Five states and Alaska have enacted these old age assistance laws, and the Pennsylvania act has been overturned by the courts because of a peculiar provision of the state constitution. Public interest in the stabilization of employment was greatly stimulated by the unemployment crisis of 1920-21, resulting in serious legislative consideration of long-range advance planning of public works and of unemployment insurance. By 1926 a few states had enacted laws for advance planning and in several states, notably Wisconsin, pioneering work had been done in preparing unemployment insurance for legislative action. In advance of legislation there have been successful experiments with unemployment insurance and regularization of employment in an imposing list of manufacturing plants, and a most significant development of unemployment insurance by joint agreement of employers and trade unions in the clothing industry.

An appalling increase in coal mine disasters has led to widespread interest in mine safety, particularly in the rock dusting of bituminous mines as an effective preventive of coal dust explosions, and by 1926 four states had provided by law for rock dusting.

The progress indicated in this brief outline of the more significant measures thus far adopted has not been without its checks and obstacles. The power exercised by the United States Supreme Court to declare laws unconstitutional has fallen with a heavy hand in recent years upon certain labor laws. Prior to the world war there appeared to be a growing disposition on the part of the court to stretch the elastic police power of the states to protect the workers against new and increasingly serious hazards of industrial employment.

Since the war several decisions of the court have been markedly in keeping with the general post-war reaction. In 1923 the Supreme Court by a five to three decision held the minimum wage law of the District of Columbia to be unconstitutional. In 1922 the federal child labor act of 1919 was declared unconstitutional by the Supreme Court. Congress in 1924 passed a constitutional amendment permitting federal action against child labor, but by 1926 only four states had ratified it. In 1922 the Supreme Court overturned for the second time in five years efforts by Congress to bring longshoremen and other harbor workers within the protection of state workmen's accident compensation laws when injured aboard a vessel at the dock. A federal accident compensation bill, designed to meet the court's objections and to relieve a third of a million harbor workers of their desperate plight was before Congress in 1926 with strongly favorable reports by the judiciary committees of both houses.

With its rapid development during the past fifteen years, the mere extent and multiplicity of labor legislation present to the citizen who would keep informed a task that is truly formidable. Obviously, only a few specialists can hope to keep pace with all the details of this growth. As in all the other sciences, it is necessary, finally, in the science of legislation to formulate fundamental principles which may be generally applied.

This book, therefore, is written from the standpoint of the citizen and the student rather than from that of the lawyer. With regard to each of the main phases of the modern labor problem—individual and collective bargaining, wages, hours, unemployment, safety and health, social insurance, and administration—it endeavors not so much to expound technical questions of legality as to sketch the historical background of the various labor problems, indicate the nature and extent of each, and describe the legislative remedies which have been applied. Throughout, it is the principles of labor law, not the details which may change from legislature to legislature, which are emphasized. And this procedure has been followed because in a democracy it is the people themselves whose collective opinion finally determines what the laws shall be and how effectively they shall be enforced.

The work is intended to be both critical and constructive—critical in that it points out the good and bad features of the statutes, constructive in that it shows how, in the light of experience, the good is being strengthened and the bad remedied. Finally, it is in full recognition that a law is really a law only to the extent to which it is enforced that each chapter emphasizes efficient administration and that the closing chapter is entirely devoted to this complex and all-important problem.

In all the advances that have been made, it is only the details of the labor code that have changed. The fundamental principles on which the legislation is based remain as they were. No important stand taken in the first edition of this book has yet had to be modified. For additional details of statutes enacted year by year, the reader is referred to the annual *Review of Labor Legislation,* published by the American Association for Labor Legislation. This *Review* is so arranged as to serve as a convenient supplement to the present work.

In assembling facts and preparing chapters for the first edition, assistance was given by many valued co-workers, including E. E. Witte, Olin Ingraham, David J. Saposs, Anna Kalet, Margarett A. Hobbs, and the following students: W. H. Burhop, Mark Greene, Ora Harnish, A. P. Haake, Harry Jerome, Gladys Owen, and Stewart Schrimshaw. For painstaking reading of manuscript and proof, we were indebted also to Jean M. Douglas and Solon De Leon. Our further thanks were extended to the following persons, to whom various chapters were submitted, and who gave valuable criticisms and suggestions for improvement: Richard T. Ely and H. W. Ballantine of the University of Wisconsin, Ernst Freund of Chicago University, Edwin V. O'Hara of the Oregon Industrial Welfare Commission, Thomas I. Parkinson and Joseph P. Chamberlain of Columbia University, Louis D. Brandeis of Boston, and Arthur N. Holcombe and Frank W. Taussig of Harvard University. For aid in making the 1920 revision of this book acknowledgment was made to Margarett A. Hobbs, Olga S. Halsey, Irene Sylvester Chubb, and Solon De Leon, of the staff of the American Association for Labor Legislation; to Edwin E. Witte, secretary of the Industrial Commission of Wisconsin; to Mrs. Glenn Turner, of the Wisconsin Legislative Reference Library; and to Prof. Don D. Lescohier,

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PRINCIPLES OF LABOR LEGISLATION

CHAPTER I

THE BASIS OF LABOR LAW

Modern industry is mainly a matter of buying and selling. Scarcely any person lives on the things which he alone produces with his own property. Formerly the protection of his person and his physical property was the principal part of the law. Now the protection of that intangible property, which arises through buying and selling and is defined in the law of contract, occupies the attention of lawmakers, courts, and the administrative authorities.

1. The Labor Contract

The labor contract is one of several kinds of contracts, which until recently has differed from the others but little in the eyes of the law. Like the others, it originates in an agreement, implies a promise, creates rights and duties, and is enforced, if need be, by the power of the state.

But the labor contract, in course of time, has come to be recognized as something peculiar. When a bushel of wheat is bought and sold, when a factory or farm is transferred, when a banker receives deposits or lends his credit, when a corporation issues stocks or bonds, the rights and duties created thereby can be fulfilled by delivering something external and non-human. But when a laborer agrees to work he must deliver himself for a time into the control of another. He earns his living, not by working upon his own property, but by working upon the property of another, and by accepting all the conditions he finds there. And, if he has no property of his own

sufficient to fall back upon, he is under an imperious necessity of immediately agreeing with somebody who has. This peculiar relation between a propertyless seller or himself, on the one hand, and a propertied buyer on the other, coupled as it is with equal suffrage of both in the politics of the country, has gradually acquired recognition as something sufficiently important for the government to take notice of. While the courts and law books have dealt with the labor contract as similar to other contracts, legislation goes behind the legal face of things and looks at the bargaining power which precedes the contract. It distinguishes the price bargain, the investment bargain, the real-estate bargain, and others, from the wage bargain. The former are dealings between property-owners. The latter is a bargain which involves not only wages, but also hours of labor, speed and fatigue, safety and health, accident and disease, even life itself. Unemployment is failure to make such a bargain; immigration, child labor, education, prison labor, collective bargaining, and so on, are conditions which determine the bargaining power of the laborer. Every topic in labor legislation is a phase of the wage bargain, and it is because a large class of people have come to depend permanently, not on their property or resources, but on these bargains with property-owners, that labor legislation has significance.

This spectacle of the free laborer, without property but with the ballot, bargaining for his livelihood but electing his rulers, is something new and unaccustomed, measured by the life of nations. It has come about through what may be called industrial, legal, and political changes.

(1) *Industry*

Scarcely a generation has passed since the natural resources of the country were sufficiently free to permit people without property to acquire ownership merely by labor. The homestead laws, culminating in 1862, may be looked upon as early labor legislation, for they were intended to provide "free land" by preventing the public domain from falling into the hands of capitalists and slave-owners and so to furnish an outlet to laborers from the East. Workmen who could not become farmers or miners could become tradesmen and inde-

pendent mechanics in the new towns. But since the lands have been closed by occupation, and their values have increased, money or credit is required to purchase them. This means that laborers without capital must seek capitalists to employ them.

In 1869 the first Pacific railway was completed, and immediately Chinese coolies made their appearance in Massachusetts as strike-breakers, and the manufactured products of Massachusetts contributed to unemployment in California. The railway and steamship have made labor almost as movable as capital, and any bargaining advantage which wage-earners have in one section of the country is quickly leveled by migration.

Huge factories and corporations were almost unknown a generation ago, but now the United States Steel Corporation has some 200,000 employees, and single establishments have thousands and ten thousands. The special bargaining power of skilled mechanics is leveled down to that of the lesser skilled.

Thus the three industrial factors of closed land, labor mobility, and large-scale production have produced a class permanently dependent on wages.

(2) Labor Law

When land and natural resources were free, labor was not always free. Slave labor in the South, indentured labor and apprenticeship in the North and South, contract labor from abroad, were based on legal devices by which the laborer could be kept from running away. Not until the enactment of the thirteenth amendment, following the Civil War, did slavery and involuntary servitude, except as a punishment for crime, become everywhere illegal.[1] The labor contract henceforth has its peculiar significance. Although in theory it is like other contracts, yet it cannot in fact be enforced.

[1] Constitution of the United States, Amendments, Art. XIII:
"Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
"Sec. 2. Congress shall have power to enforce this article by appropriate legislation."
The exception in the case of the Seaman's contract will be noted later.

The laborer cannot sell himself into slavery or into involuntary servitude. He retains the right to change his mind, to quit work, to run away. Certain other contracts can, in the absence of any other sufficient remedy, be enforced by the courts by compelling "specific performance."[1] But specific performance of the labor contract is involuntary servitude. Business contracts, if violated, are ground for damages which the court orders paid even to the extent of taking all of the business property of the debtor. The labor contract also, if violated, is ground for damages, but for the court to order damages paid out of labor property would be to order the laborer to work out the debt. This is involuntary servitude. Hence the employer is left with the empty remedy of bringing suit against a propertyless man. He can protect himself by making contracts which he also can terminate at any time by discharging the workman without notice.

Thus the labor contract becomes, in effect, a new contract every day and every hour. It is a continuous process of wage bargaining. It carries no effective rights and duties for the future and is as insecure as it is free. After land has ceased to be free the laborer becomes free. Closed resources and freedom with insecurity produce in time a permanent class of wage-earners.

(3) Politics

In the Northern states, the suffrage was granted to all male wage-earners during the years preceding 1845 by removing the property qualifications.[2] This was as much as forty to sixty years in advance of other nations, and was, in fact, the first experiment in the world's history of universal admission of the propertyless laborer to an equal share in government with the propertied capitalist or employer. A similar experiment was made in the South after the slaves were freed by war. Henceforth the laborer not only shares in electing the legislature that makes the law, but he shares in selecting the judges who interpret it, and the governors, factory inspectors, sheriffs, marshals, and constables who enforce it. The labor

[1] See Andrews, *American Law*, 1908, Vol. I, pp. 582, 1586.
[2] Rhode Island was the only Northern state that retained the property qualification.

contract and the wage bargain become as much a question of the control of politics as they are of large-scale industry and the mobility of labor. Wherever property-owners or employers can deprive the laborer of his suffrage or can control his vote, there they can more effectively control his bargaining power. He may be disfranchised, as in the South, or intimidated, as in some towns controlled directly by corporations, or manipulated and bought, as in towns controlled indirectly through the political "machine." So the struggle for the suffrage, begun ninety years ago in the North, renewed in the struggle of twenty years ago for the secret ballot, and kept up in the struggle against political corruption, is both a cause and a consequence of the appearance of wage-earners as a class in modern industry.

2. Individual Rights

Federal and state constitutions contain the fundamental laws and create the authorities of government with the power to interpret, amend, and enforce them. The Declaration of Independence and most of the state constitutions declare that all men are created equal. Prior to the Civil War, certain of the Southern states declared only that "all freemen" are equal. Those constitutions were afterward changed to read "all men" are equal. Some constitutions say that they are "equally free and independent." If they are equal, they have equal rights. Some of these rights are declared to be natural, essential, indefeasible, inalienable. Among the inalienable rights mentioned in different constitutions are life, liberty, the pursuit of happiness, acquiring, possessing and protecting property, reputation, and enjoyment of the gains or proceeds of a man's own labor.[1]

[1] The Declaration of Independence is "read into" the constitutions, where it says: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness." Twenty-eight state constitutions declare that men are naturally equal. Five restricted this to "freemen" before the Civil War and afterward changed the phrase (Kansas, 1858). Three states assert the equality of all men framing a "social compact." Thirty-five states have clauses embodying the doctrine of natural rights. The right of acquiring property, by which contract is understood, is claimed as an inalienable natural right by twenty-six states. Three states in-

The federal constitution guarantees certain means for protecting these rights, and prohibits certain measures that violate or impair them. Among the protective measures are the writ of *habeas corpus,* trial by jury, a republican form of government, freedom of speech or of the press, the right peaceably to assemble and to petition the government for a redress of grievances, the right to keep and bear arms, security against unreasonable search and seizure of persons, of houses, papers or effects, indictment by a grand jury, speedy and public trial, compensation for property taken for public use, due process of law, equal protection of the laws. Among the prohibited measures are bills of attainder, *ex post facto* laws and laws impairing the obligation of contracts. Finally, the enunciation of certain rights cannot be construed to deny or disparage others retained by the people. These restrictions, however, with the exception of those insuring equal protection of the laws and the obligation of contracts, are binding on Congress and not on the states. The fourteenth amendment prohibits any state from denying due process of law and equal protection of the laws but under the decisions of the courts this protection does not extend to other rights guaranteed in the early amendments to the constitution, which, as has just been said, are protected only against infringement by Congress.[1]

If certain rights, such as life, liberty, and property, are strictly and literally "inalienable," then they cannot either be given away by any person or taken away by any other person or by government, either by coercion or by persuasion, either by violence or by voluntary sale and compensation. If the owner sells them, they are worthless to the buyer, because he gets no title. Of course, it follows that these rights were never considered strictly "inalienable." Only an impossible anarchist could believe this. The fourteenth amendment partly clears the atmosphere. "Privileges and immunities" are sub-

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clude the right to reputation, which may be considered as a kind of property. The enjoyment of the gains of a man's own industry, or of the proceeds of his labor, is an inalienable right in two states. Kansas specifies the right to control over one's own person. Montana, when mentioning the right to seek and obtain safety and happiness, adds the proviso "in all lawful things."

[1] Willoughby, *Constitutional Law of the United States,* 1910, Vol. I, pp. 175 ff.

stituted for inalienable rights. Life, liberty, and property can be taken provided it be done according to "due process of law." "Equality" becomes "equal protection of the laws." In other words, rights become "relative," not "absolute," *alienable* but *protected.*

If rights are relative, then their meanings and definitions are liable to change when the relationships to which they refer happen to change. The rights of property are defined in several constitutions as the right of acquiring, possessing, and protecting property. These were the significant points in the definition when people were isolated, as they were in colonial and pioneer times. At that stage, their main concern was in getting and holding physical property, like lands, crops, or even human beings, if the definition of property included slaves. But in modern society, based, as it is, mainly on buying and selling, the right to withhold property from others becomes significant. It is this that protects the individual in his power of bargaining—his power, protected by law, to hold back and wait until an agreement can be reached upon the exchange value of the property before permitting others to take it or use it.

This right to withhold property is like the laborer's right to withhold his labor, by refusing to work or by quitting work. In both cases this is also "liberty"—a "personal" right rather than a "property" right. It is his right to withhold his services from the use of others until their value can be agreed upon. This is the legal basis of his wage bargain.

Hence property and liberty change places and merge their meanings when industry changes from the agricultural stage of production for self to the modern stage of bargaining with others. The wage-earner's "property" becomes his right to seek an employer and to acquire property in the form of wages; his property in the sense of liberty is his right to refuse work or to quit work if the conditions are not satisfactory. The employer's "property" is, in part, his right to seek laborers and acquire their services; his property, in the sense of "liberty," is his right to run his business in his own way, that is, in part, to withhold employment or to discharge the laborer if the bargain is unsatisfactory.

These definitions of property rights are evidently quite dif-

ferent from the older ideas of property in physical things, such as lands, buildings, machinery, or slaves. They signify rights of buying and selling, of access to a market. They are "intangible" property, and not "tangible." They are like the "good will" of a business. They are defined as "property," because they are necessary to give to things and services that value in exchange which in modern industry depends as much on selling them as it does on "producing" them.

Only within the past half-century have courts and legislatures distinguished and protected such intangible property as good will, trade marks and trade names, based on the right of access to a commodity market; and still more recently has "access to a labor market" been treated in effect as a property right of both the laborer and the employer, in addition to a personal right.[1] Not merely the contract after it is made is property, but the right to be unhindered by others in order to make a labor contract is a property right. It is "intangible" property both of the laborer who seeks employers and of the employer who seeks laborers. It is intangible, because it is merely the act of offering and yet withholding services or commodities. It is property and becomes capital in the sense that it is the power of getting value in exchange. Just as the employer's property is both his physical factory and his intangible business, so that the laborer's property is both his physical body and his intangible labor. This "intangible" property has come to mean a part of what was formerly known as personal liberty. It is that kind of liberty that has money value. It gives value alike to the laborer's labor and the employer's business.

If meanings of property and liberty change with changes in industry, so does the meaning of equality. Equality for the colonist and the pioneer signified mainly equal right to acquire property *through labor*—now it signifies equal right to acquire it *through bargaining*. But where bargaining power on the one side is power to withhold access to physical property and the necessaries of life, and on the other side is only power to withhold labor by doing without those necessaries,

[1] See also Willoughby, *Constitutional Law of the United States,* Vol. II, p. 872; Hall, *Constitutional Law,* 1914, pp. 134, 135. "Doctrine of Conspiracy," p. 106. Commons, John R., *Legal Foundations of Capitalism,* 1924, chaps. II and VIII.

then equality of rights may signify inequality of bargaining power. The gradual recognition of inequalities of waiting power has required changes to be made in the legal means of protecting equality, and these changes underlie the history of labor legislation. They occur within limits prescribed by "due process of law."

3. Due Process of Law

The constitutions, which declare private rights inalienable, yet provide methods and standards both to abridge them and to protect them. A right has two sides. It is a *right* of one and a *duty* of another, or of all others. One person signs a note agreeing to pay $20 to another person. The second person has a right to receive $20—the first is under a duty to pay it. One person owns a piece of land. He has a right to use it as he pleases—all other persons are under the duty to keep off and let him alone. To protect the rights of one is to enforce the duties of others. If a right of one is abridged or reduced, the corresponding duty of another or of all others is reduced. If a debt is reduced from $20 to $10, both the right to receive and the duty to pay are reduced. If a person's right to use his land as he pleases is restricted, then the corresponding duties of others are reduced. On the other hand, a person's duties are just so much subtracted from the total of his liberties, and so to reduce the amount of his duties is to enlarge the total amount of his liberties. To reduce the rights of one is to enlarge the liberties of others.

Here must be noted the distinction already made between the labor contract and the wage bargain. The two may be diametrically opposed. From the standpoint of the wage bargain, if an employer's right to require a woman to work unlimited hours is reduced, then the woman's duty is consequently reduced and her liberties enlarged. But, from the standpoint of the labor contract, she loses the liberty to contract for unlimited hours. This may be a mere fictitious liberty for her, existing only in the eyes of the law, whereas it is in reality the right of the employer to compel her to work. From the legal standpoint her liberties are abridged—from the economic standpoint they are enlarged. Likewise, from the legal standpoint the employer's duty is reduced when her hours

of service are reduced. From the economic standpoint his duty may be increased, if her bargaining power is increased. It is this contradiction between the labor contract and the wage bargain that labor legislation attempts to reconcile.[1]

The state exercises the great and sovereign power of enlarging and abridging rights and liberties without consent of the parties. This power is intended, under our constitutions, to be safeguarded most minutely and accurately. The safeguards are developed with reference to an all-inclusive term, "due process of law."

Due process of law, along with the provisions of the constitutions, determines both the substance and the procedure of government in three principal aspects: first, the *public powers,* or the powers of government under which authority is granted to protect, enlarge, or abridge rights and duties; second, the *public authorities,* or the powers of officials acting within that authority; and third, the *principles,* standards or "maxims" that determine the limits beyond which public powers and public authorities shall not go. Each of these aspects affects labor legislation.

(1) *Public Powers*

a. Power to Preserve Peace and Execute the Laws. Government exists, first of all, to enforce the duty to keep the peace. To do this it may use force. It is the custodian of physical coercion and the authority that may threaten violence. Only in actual self-defense or in extreme urgency has an individual the right to resort to violence. He must confine himself to persuasion in every other case. Groups of individuals may go on strike, may get together for free discussion, or for agitation and joint action, but they must assemble and act peaceably. Even though they suffer the greatest injustice they must not go beyond the duty of obedience to law and order. The authorization, or "power," of the state to use or threaten violence in order to execute the laws, to protect person and property, to punish for crime, is its first and highest justification, without which no other power could exist, and all

[1] See "Public Benefit," p. 23; "Equal Protection of the Laws," p. 28; "Maximum Hours, Women," pp. 259-263. John R. Commons, *Legal Foundation of Capitalism,* chap. IV.

government would be impossible. This is its exclusive authority, and it cannot compromise the question or permit private violence, except at the peril of its own existence. Under the justification of preserving the peace and executing the laws, the state may deprive individuals of life, liberty, or property without consent or compensation.

b. The Taxing Power. The taxing power is an authorization under which government takes private property for public purposes without compensation. By this authority the state provides for the most fundamental legislation for or against labor. It provides free schools, compulsory education for future workers, and pays the salaries and expenses of all officials who enforce the labor laws. A labor law is defeated as surely by voting against taxes to enforce it as by voting outright against the law itself. The taxing power is used, not only for revenue, but also for purposes which otherwise are justified under the police power. A tariff on the products of foreign pauper labor is designed to strengthen the bargaining power of American labor. A tax on poisonous phosphorus matches is placed so high that it brings in no revenue at all, and serves only to protect the health of employees. Under our form of government the police power belongs to the states and not to the federal government; but the federal government does, under the justification of the taxing power, what the states might do under the police power.

c. Guardianship. The state is the universal trustee or guardian, and exercises the remnants of the authority which the monarch had as *parens patriæ,* the "father of his country." In mediæval times the property of a chief tenant reverted at death to the king, and the children became the wards of the king, for the king's benefit. Now the state is trustee for the benefit of the children and the people. This power justifies child labor legislation. In the early law of *patria potestas,* or "power of the father," the natural father was the owner of his child, as he was owner of his wife, lands, slaves, and chattels. It was the child's duty to obey. Now, the child has many rights against its parent, and, since it is unable to enforce these rights itself when the parent violates them, the state intervenes as its guardian on behalf of the people of the

future.[1] It takes the child away if necessary; it deprives the parent of his right to the child's earnings by prohibiting its employment or by reducing its hours of labor; it enforces the parent's duty of education by compulsory school attendance. *Patria potestas* yields to the authority of *parens patriæ*.

This authority of the state is nowadays treated as a branch of the police power.[2] As such, it is a justification for an extreme use of the police power not permitted in other cases. It deals with children unable to make bargains for themselves. The police power primarily interferes with the bargains of adults. Restrictions which the courts would not permit under other classifications within the police power are unquestionably approved when the justification of guardianship is merged with that of police.

d. Eminent Domain. The state may be an owner of property and business, like a private person. It may acquire ownership by various methods, all of which rest ultimately on its sovereign power of coercion. Some of its properties are acquired by conquest. Others are purchased by voluntary bargain; others, by compulsory bargain, under the power of eminent domain. In either case the power of taxation may furnish the funds.

Eminent domain is a justification of the state in taking property from its own citizens without their consent. It differs from the other powers in that it applies to an individual rather than to a class, and therefore our constitutions require that compensation be made when property is taken. The individual has no inalienable right to withhold his property from the state, if the state desires it for a public purpose. But the constitutions protect the individual against the state by requiring just compensation.

e. Proprietorship. Whether it acquires physical property or not, the state, in its various divisions of town, city, county, state, and nation, becomes an employer of thousands of wage-earners. It fixes their wages; hours, and conditions of labor according to its own ideas as determined by its legislatures, executives, or courts. It is not restricted, as it is when exercising the police power, because it is not taking away private

[1] See Andrews, *American Law,* pp. 652-654, and cases there cited.
[2] Freund, *Police Power,* 1904, pp. 246-253.

property (except perhaps as it falls back on the taxing power to pay the wages). Consequently, the American state, under universal suffrage and the power of proprietorship, or public ownership and operation of public business, supported by the taxing power, has gone far ahead of private owners in raising wages, shortening hours, and improving the conditions of its employees. Even contractors, or private employers who work for the state, are required, under laws that provide for "fair wages," as in England, or for the "prevailing rate of wages," as in America, to pay higher wages or observe shorter hours than they might in their work for private capitalists.[1]

f. The Police Power. The police power is an indefinite authorization for the American state to abridge liberty or property without consent or compensation in addition to its other more definite powers. An individual is sick with diphtheria. The state draws the line of quarantine beyond which his family and friends are deprived of their liberty of movement. Valuable animals have the foot and mouth disease. The state may order them to be shot and buried without consent or compensation. A public utility corporation has the valuable bargaining power of fixing its prices for gas, electricity, water, or transportation, and withholding service if the price is not paid. The state reduces the price and compels the company to continue or increase the service. The employer has valuable rights in his defenses of assumption of risk, fellow servant, and contributory negligence in suits brought against him for damages caused by accident. The state takes away his defenses and increases by so much the value of the rights belonging to his employees.[2] Other examples might be given. The bulk of labor legislation by the states looks for authorization to the police power.

The police power in the United States differs from other powers in the miscellaneous and indefinite range of subjects that it may cover. It is defined rather by what it does not cover than by what it does. It differs from the taxing power in that it reduces the owner's liberty to use, acquire, or own property, rather than the revenues derived from it. It differs from eminent domain in that it applies to a class rather

[1] See "Historical Development of the Minimum Wage, United States," p. 205; "Maximum Hours, Men," p. 266.
[2] See "Industrial Accident Insurance," p. 426.

than to an individual and does not require compensation to be made. While it includes guardianship, it differs from it in that it abridges or enlarges the rights of adults and full citizens instead of those of children. It differs from public ownership and operation, or proprietary power, in that it abridges or enlarges the powers of private persons over their own persons or property instead of the power of the state over its own property or business. It differs from the power to use violence in order to keep the peace and execute the laws, in that it is one of the justifications or reasons advanced according to which the state is authorized to enact the laws themselves, rather than the physical power to enforce them after enactment. It is the police *power,* not the police *man.*

The other powers of the state, previously mentioned, are in theory definitely limited. Either they accomplish only a specific object of government, such as conquest, peace, the execution of laws, the acquisition of revenues, or the purchase of property, or they extend only to a limited class of people, such as children or public employees. But, in addition to these objects and persons, there are those large and indefinite purposes of public safety, health, morals, welfare, and prosperity, and those many but indefinite classes of producers and consumers, buyers and sellers, employers and employees, who often are restrained by government under the police power. These purposes and classes moreover, are continually changing as industry changes from agriculture to commerce, or as property changes from physical things to bargaining and contracts, or as population becomes more congested and people interfere with one another, or as public opinion regarding rights and duties, morals and welfare, advances from ignorance to intelligence, from servitude to liberty. It is the police power, for the most part, that affords, in the case of the state governments, that elastic justification by which the state abridges or enlarges liberty or property without compensation, in order to achieve a newly recognized public purpose through a newly recognized class of persons or things.

g. Commerce Power and Federal Powers. The police power is not isolated from the other powers. All of them are but different ways of looking at the single power of sovereignty. But, under our system of government, sovereignty is divided

between the federal government and the state governments. The federal government has specific delegated powers of taxation, of regulation of foreign and interstate commerce, while the states have the taxing power, and, in addition, the "police power." But the federal government uses its delegated powers to accomplish the same purposes that the states accomplish with their reserved police power. The taxing power is used by the federal government, not merely to secure revenue, but to protect industry and labor against foreign competition, or to suppress state bank notes, colored oleomargarine, or poisonous phosphorus matches. The "commerce" power is used to regulate railroad rates and services, to restrict hours of labor, and to require the adoption of safety devices by railroad or steamship companies. New lines of legislation protecting labor, such as child labor and workmen's compensation, if adopted by state governments, are justified by the police power —if adopted by the federal government, they are justified by the taxing power or the commerce power. Yet all powers are but the single power of sovereignty split up to fit the constitutional divisions of government.[1]

h. Police Power and the Constitution. From the foregoing, it will be seen how impossible it is accurately to define the police power, the taxing power, or the commerce power. Comparing the police power with the principles of the common law, Freund says:[2] [the state] "exercises its compulsory powers for the prevention and anticipation of wrong by narrowing common-law rights through conventional restraints and positive regulations which are not confined to the prohibition of wrongful acts. It is the latter kind of state control which constitutes the essence of the police power. The maxim of this power is that every individual must submit to such restraints in the exercise of his liberty or of his rights of property as may be required to remove or reduce the danger of the abuse of these rights on the part of those who are unskilful, careless, or unscrupulous."

Describing this power as developed under American institu-

[1] For detailed history of the conflict between the commerce and police powers, see Hastings, "The Development of Law as Illustrated by the Decisions Relating to the Police Power of the State," in *Proceedings of the American Philosophical Society*, 1900, Vol. XXXIX, p. 349.

[2] *Police Power*, p. 8.

tions, Ely says:[1] "It is that power of the courts committed to them by American constitutions whereby they must shape property and contract to existing social conditions by settling the question of how far social regulations may, without compensation, impose burdens on property."

Comparing it with other powers of government, Hastings says:[2] "It is not necessary to adopt Treitschke's oft-repeated declaration, that the state is force, in order to conclude that the 'police power' is a fiction. Every judge whom we have seen attempt to analyze it finds in it Madison's 'indefinite supremacy' of the state. The doctrine of faculties and separate powers of the state may not be as essentially absurd as Treitschke thinks, but in our case the term is certainly a mere abstract and collective one for the state, where regarded as employed in certain functions." Hastings also says that the police power is "a branch of constitutional law peculiar to countries having legislatures with limited power. It is an outgrowth of the American conception of protecting the individual from the state."[3]

We may not say that the police power is a fiction, for it is a necessary part of the reasoning by which, under our federal Constitution, the distinction is made by the courts between those powers that belong to the states and those that belong to the federal government. Yet, from another point of view, it is a fallacious distinction if it pretends to assign to the states a different kind of power from that exercised by the federal government. We have just said that the federal government accomplishes, under the name of "taxing power" or "commerce power," what the states accomplish under the name of police power. While the refinements of legal logic may seem to make these powers different, they are identical from the standpoint of the kind of legislation and the public purpose which they justify. The police power has sometimes narrowly been held to be limited to matters of health and morals. But legislatures and Congress refuse to be limited in this way, and are held in restraint by the courts. They regulate the

[1] *Property and Contract in Their Relations to the Distribution of Wealth*, 1914, Vol. I, p. 220.
[2] Hastings, *op. cit.*, p. 349.
[3] *Ibid.*, p. 360.

bargaining power of individuals and corporations where no justification can be found in the protection of health and morals. From this standpoint, the theory of the police power is used by the courts to determine how far the state legislature may be permitted to go. But they use similar standards or principles to determine how far Congress may go in using the taxing power and the commerce power.

Hereafter, for our purposes, in speaking of the police power, we shall use the term in this broad sense, to imply all the powers of government, whether state or federal, whether of police, taxation, or interstate commerce, in so far as they are used to justify that indefinite extension of power to abridge liberty or property without compensation for some newly recognized public purpose. The practical problem with which we are concerned is not so much the technical legal distinctions between different powers, as the extent to which these powers are increasingly used to determine the bargaining relations between employers and employees. In this way, without formal amendment, the American constitutions are unconsciously amended by the police power through the change of public opinion regarding the rights and liberties of labor. This change works its way into the constitutions, partly through the discretion of public authorities, and partly through the application of old principles of justice to new conditions.

(2) *Public Authorities*

Here the issue is between the amount of discretion, or power to enforce one's own opinion, allotted to the executive, legislative, and judicial branches of government. Shall the legislature or Congress use its sovereign power to the extreme limit of equalizing fortunes and giving labor a high preference over capital, or shall it be restricted to narrower limits? In other words, can the legislature, under whatever power of taxation, commerce, or police, put into force its own notions of "general welfare" and "social expediency," or must it be limited to the notions held by the courts?

In monarchical countries, or countries whose executives inherit monarchical powers, executive discretion still remains to the monarch, or president, or the executive council,[1] after legis-

[1] Switzerland.

lative powers have been taken away by Parliament. This power of discretion is the executive's power to decide when and where a law applies, and to issue rules, regulations, ordinances, or orders which have the effect of law, which are needed to enforce the law, or even are thought by the executive necessary to fill any gaps which Parliament has left in the scheme of laws. Indeed, in enforcing a law, every executive officer must exercise some discretion, which he does as his own opinion directs. Discretion is the power to act without interference according to one's own opinions, or policy, or theory of things. It is not supposed to be capricious or changeable. It is power to adopt and follow a policy, not power to be arbitrary and unreasonable. Even a policeman must make up his mind whether a man is drunk or not, before applying the law against public intoxication. Policemen may differ in their opinions on this matter, even though the facts do not differ, and their differences are the little germs of what, in the case of a mayor, governor, president, or king, would be called executive policy, or executive discretion.

Under the theory of our Constitution, however, the executive officers have no discretion to follow a policy of their own. The legislature is the policy-making branch of government. It has discretion; it can put its opinions into effect; it can adopt a policy, because it is supposed to represent all interests in society and to know all the facts. The effort is therefore made in our country to limit the executive discretion as narrowly as possible, in order that it may be said that the executive merely enforces the law as he finds it. To do otherwise would be to delegate legislative power to an authority that is not legislative under the Constitution.

But with us, not even the legislature is the supreme legislative power. The written constitutions are the fundamental laws, enacted directly by the people themselves. Being laws, they also express a policy, based on the opinion of the people who adopted them. And their policy must prevail against the legislative discretion. The policy of the constitutions is extremely individualistic. It asserts inalienable and natural rights of individuals against all others and against the state itself. When a policy of the legislature set forth in a statute comes into conflict with this individualistic policy of the con-

stitutions, someone must be called upon to decide which shall prevail. The supreme courts, at first with hesitation, but afterward with assurance, have made these decisions. If a statute of the legislature fixing the hours of labor or the minimum wage of women, conflicts with the Constitution, the courts merely refuse to enforce it—they enforce the Constitution itself. They declare the law "unconstitutional." [1]

There is a principle of our courts to the effect that a law is not unconstitutional if a way can be found to sustain it. Hence, if there is an apparent conflict between the constitution and the attempt of the legislature to abridge private rights, and if the court cannot support the legislature under the other limited justifications of taxation, guardianship, proprietorship, eminent domain, or protection of person and property, it may see its way to support it under the elastic justification of the police power. Thus the police power in America may be looked upon as the courts' justification for gradually *amending the Constitution by interpretation* so that it may conform to the new objects and new restrictions on property which the legislature deems important. A similar justification and gradual amending of the Constitution takes place when the court permits Congress to extend the taxing power or the commerce power to the regulation of rates, services, wages, hours of labor, safety, health, and compensation for accidents.

This distinction between discretion on the part of the legislature and interpretation on the part of the courts is a distinction not so much between the several powers of government as between the functions peculiar to the several branches of government. It leads us to distinguish the public authorities who share in the exercise of the public powers.

Government can interpret and exercise its powers only through individuals. Each of these individuals takes an oath appropriate to his office, agreeing to support the constitution, to execute the law, to maintain order. For the time being, his acts are the acts of the state, provided he keeps within the authority granted to him. To the legislature is granted the authority of deciding on public policy for the future, and, in

[1] For history of laws declared unconstitutional see Moore, "The Supreme Court and Unconstitutional Legislation," *Columbia University Studies in History, Economics, and Public Law*, Vol. LIV, No. 2, 1913.

doing so, it exercises discretion. To the courts belongs the power of deciding particular cases as they arise, and in doing so they interpret the laws. The executive enforces the law. But, to a fourth and new branch of government, unrecognized in the original constitutions, which may be called the administration,[1] is coming to be assigned the function of investigation of those economic and social conditions upon which the several branches of government base their decisions. While these functions cannot be separated in practice, yet they stand out as characteristic of each branch of government. *Execution, discretion, interpretation,* and *investigation* are the four great divisions in the functions of officials, and the *executive,* the *legislature,* the *judiciary,* and the *administration* are the four branches that are specialized for these functions.

a. The Executive. The executive authorities are entitled to use violence if necessary, and to deprive individuals of life, liberty, and property without their consent. Private individuals may not even resist an officer of the law. The army, navy, and militia may be called upon by the governor or president in time of strike or riot. Sheriffs, marshals, their deputies and policemen, may arrest and imprison individuals in order to prevent violence and to execute the orders of the court in the administration of civil and criminal justice. They belong to the military or "police" force of the state, which, under our theory, is subordinate to the civil authorities. The police force, as already stated, differs from the police power, in that the police power is the authorization, or justification, under which civil authorities are entitled to exercise discretion in enacting laws and issuing orders, while the police force is the agency which exercises coercion as directed by these laws and orders.

While in law the military and police forces have no discretion, but must follow orders, yet, in the urgency of immediate action, they must exercise discretion before their acts can be passed upon by the civil authorities. Only in case of war can executives legally set aside the superior authority of the courts, but war can be declared only by the legislature, a

[1] *Die Verwaltung.* The term "administration" has been used by the Supreme Court in this sense, Interstate Commerce Commission *v.* U. S., ex rel. Humboldt Steamship Co., 224 U. S. 474 (1911) 32 Sup. Ct. 556; Pennsylvania R. R. Co. *v.* International Mining Co., 230 U. S. 196, 274 (1912).

civil authority.[1] The arbitrary discretion of the executive is sought to be held in check by that greatest instrument of freedom, the writ of *habeas corpus*. By means of this writ the court, a civil authority, orders the executive, or military power, to bring out a prisoner for hearing and for release if wrongly imprisoned. If the executive refuses, then the civil authority *ipso facto* becomes subordinate to military force. In so far as the executives and the military and police authorities exercise discretion, their opinion of the rights and duties of employer and employee is sometimes the deciding factor one way or the other in determining the relative power of the two in the wage bargain as affected by strikes, lockouts, public assembly, public speaking, agitation, arrest of leaders, protection of strike-breakers, picketing, the use of the streets, and otherwise.

b. The Legislature. The legislature is the authority which, acting within limits, is entitled to exercise discretion in deciding upon public policy and enacting laws to carry the policy into effect. It is the one branch of government where the representatives of conflicting opinions are entitled to express their joint opinion in the form of law that shall be enforced on all persons with or without their consent. Other branches of government are considered to be impartial and limited to the execution of the law as the legislature prescribes. But the legislature may be partisan in politics and partial between employers and employees. It is considered that, if partisans meet and discuss in an orderly way their points of antagonism, the outcome will be a compromise in which the arbitrary power of no individual or class will dominate others. Yet, in fear that the legislature may not act justly, and may override minorities or those not represented, the people have enacted the higher law known as the constitution, with its bill of rights and its limitations on the legislature. This leads to the judiciary.

c. The Judiciary. Under our constitutional system the judicial branch holds a high and unique position. In order

[1] This has apparently been denied by the Supreme Court of West Virginia, which sustained the acts of a "military commission" in sentencing strikers to prison, State *ex rel.* Mays *v.* Brown, 71 W. Va. 519, 77 S. E. 243 (1912); *ex parte* Jones, 71 W. Va. 567, 77 S. E. 1029 (1913).

that it may be removed from the heat of partisanship and partiality it is made independent of the executive and legislative branches. In order that the federal system of a central government and forty-eight state governments, each supreme in its own field, may operate in harmony, the federal court is made the final authority to determine how far the field of each extends. By the fourteenth amendment to the Constitution, all persons born or naturalized in this country enjoy a double citizenship—that of the United States and of the state wherein they reside. By this amendment the federal courts have authority to prevent any state from abridging the rights which the federal Constitution and laws grant to them as citizens of the United States, and to prevent any state from depriving any person of life, liberty, or property without due process of law. The federal courts interpret and apply treaties with foreign nations and protect the rights of aliens. Finally, since the acts of the federal Congress or executive may conflict with the Constitution, the federal Court may declare them unconstitutional and hence refuse to apply them, in order to protect the Constitution.

In this many-sided jurisdiction over states, over Congress, over the executive, over inferior courts, and over private citizens, and in the interpretation of these many laws, the Supreme Court of the United States exercises authority not only judicial, but also, in fact, legislative and executive; so also with the supreme courts of the states within their proper jurisdictions. When deciding between a law of the legislature and the law of the constitution, they necessarily decide between the policy of the legislature and their own opinion, based on previous decisions, of the policy contained in the constitution. When nullifying an act of the executive they interpose their opinion of the law and the constitution against the executive's opinion. Yet they are but performing the judicial function of interpreting the laws and making their application to the facts of each particular case, as it arises. Their legislative and executive functions arise because they have authority to apply their interpretation to cases in which the acts of legislatures and executives are called in question, as well as cases where only private citizens are the litigants.

In this way is established, as the court has said, "a government of laws and not of men."[1]

The courts, just as legislatures and executives, are composed of men. They, too, are guided by opinions, and their opinions change with change in experience and change in judges. The difference consists in the procedure, the standards, and the safeguards by which the judges arrive at their opinions, compared with those which restrain the more hasty opinions of lawmakers and executives. It is merely "opinions," after all, rather than written constitutions, that protect, enlarge, and abridge rights and liberties.

d. The Administration. Opinions of individuals are so capricious, fluctuating, and uncertain, so liable to be bent by bias, passion, and interest, that our constitutional system of government imposes methods and principles designed to reduce them to an orderly system based on reason. These methods are *investigation* or the accurate discovery of facts and conditions, and in more recent times the administrative branch of government has been devised with investigation as its main purpose. Investigation is so involved in all the topics of labor legislation that the treatment of administration is reserved for the concluding chapter.

(3) *Principles*

The other essential to an orderly system of reason in place of capricious opinion is the principles, standards, or "maxims" that underlie due process of law. Under the theory of our courts, the principles of law and justice are immutable and unchanging. Facts and conditions change, and these are revealed by investigation, but the principles remain the same, though their application changes when the facts change. The leading principles that concern us are "public benefit" and "equal protection of the laws."

a. Public Benefit. The effect and purpose of the police power are to impose a duty on some individual which rebounds to the benefit of other individuals.[2] In despotic or oligarchic governments these benefited individuals are likely to be the favorites and courtiers of the monarch or the privileged and

[1] Marbury *v.* Madison, 1 Cranch 137, at p. 163 (1803).
[2] See "The Police Power," p. 13.

aristocratic classes. In a democratic or republican government they are likely to be political partisans, monied interests, employers' organizations, trade unions, or other classes who get control of the legislature and enact laws merely for the benefit of their private interest at the expense of other private interests. But if a thing of this kind happens, then the legislature is doing the very thing which revolutions and written constitutions were designed to prevent when despots and aristocrats were the offenders. Hence it is that every act of the legislature must be tested by a standard which shall determine whether the persons or classes of persons to be benefited are so benefited merely because they have power in the legislature to impose burdens on others, or because the benefit to them is also a benefit to that body of the whole people which we call "the public." If the benefit goes only to private persons for their private benefit, then the legislation is unconstitutional, because it employs the sovereign power of government for private purposes. If those persons who are benefited are either the entire population or such a significant part of the population that their benefit is also a public benefit, then the powers of government are put to their proper use of performing a public purpose.[1]

Thus we have a series of terms closely related or synonymous, all of them implying public benefit, such as public utility, public interest, public use, public value, public service, public welfare, public purpose. These indicate the most fundamental principle, standard, or maxim, which measures or limits the extent to which the legislature may go in exercising its police power.

Public benefit is not something fixed and unchangeable. The police power particularly is that justification by which the definition of public benefit may be changed or enlarged as time goes on. In the final analysis this enlargement of the definition of public benefit is merely an enlargement of the court's opinion as to what constitutes a public purpose. But, behind the change in the court's opinion is the change in *con-*

[1] The term "public purpose" is usually limited to taxation and eminent domain, but in this book it is also applied to other powers, especially the police power.

ditions and the change in *public opinion.* Among the changes in conditions which lead to changes in opinion are those industrial changes already mentioned, such as the change from free land to closed land, the changes in transportation and mobility of labor, the development of large scale industry, all of them throwing large masses of labor together into active competition. The increasing congestion of population, whether in towns or factories, has brought a change of opinion as to the need of extending the police power in matters of health safety, and morals.

Accompanying these changes in outward conditions may be noted significant changes in public opinion and court opinion regarding labor. In the *colonial* or *agricultural* stage of industry the man without property was looked upon as partly shiftless, partly vagabond, partly criminal, and the opinion of the time supported many kinds of coercive laws by which both adults and children might be captured or enslaved or otherwise compelled to work. In this way it was considered that propertyless laborers would be trained in the habits of industry and thrift by which they could rise to the position of proprietor and could share in the rights and civilization of their superiors.

A *citizenship* stage followed, beginning in the decade of 1820, when the propertyless man was granted the suffrage. This produced at once a revolutionary change in the attitude of labor toward itself, shown in the first series of strikes on a large scale for reduction of hours of labor with the demand for more leisure for the duties of citizenship, as well as the demand for free schools, for the abolition of imprisonment for debt, of indentured service, and other remnants of the servile stage.

Immediately following this period and the failure of aggressive methods, after the panic of 1837, came what may be called the *humanitarian* period. Labor, for the time being, lost its power of attack and became incapable of self-help. So the long period of unemployment, until the gold discoveries of 1849, produced a class of eminent men in sympathy with labor, and brought about the beginning of legislation abolishing imprisonment for debt, providing wage and homestead

exemptions, free schools, protective tariffs against foreign pauper competition, and generally removing the opinions of servility, dissoluteness, and criminality theretofore held regarding propertyless labor. This remarkable period culminated in the Civil War, which freed the slaves. It was accompanied by similar movements in Europe, and altogether was nothing less than a revolution in public opinion regarding labor.[1]

With the decade of the 'sixties began again an aggressive movement of labor, headed in Europe by the International Workingmen's Association, which later split into socialism, anarchism, and trade-unionism, and in the United States by the National Labor Union, which finally split into greenbackism, socialism, and trade-unionism. This period, extending into the twentieth century, may properly be characterized as a period of *class struggle,* in which new and enormous fortunes derived from industry were pitted against unprecedented organizations of labor in many deadly struggles, and in which legislatures responded to the demands of labor for legislation, and the courts responded to the demands of capital by declaring such laws "class legislation" and therefore unconstitutional.

This period, to a considerable extent, continues to the present time, but the beginning of another, which may be called the *public benefit* period of labor legislation, dates from 1898, when the Supreme Court decided the case of Holden *v.* Hardy.[2] Hitherto the police power was recognized mainly as an authority to enforce protective restrictions against producers in behalf of consumers. This decision affirmed the power to enforce such restrictions on employers and consumers in behalf of producers. In other words, whereas formerly, for the most part, the health of consumers, but not the health of producers, was a public benefit, now the health of the laborer as a producer is considered to be as much a public benefit as the health of the consumer of his product. If this be so, then the liberty of both the employer and the employee to make a labor contract may be restricted and regulated, if it is found

[1] See chaps. II, "Individual Bargaining," and III, "Collective Bargaining," of this book.

[2] 169 U. S. 366, 18 Sup. Ct. 383 (1898). The decisions affirmed the constitutionality of legislation reducing the hours of labor of *men* who work in smelters and underground.

that the contract is injurious to the laborer. The protection of labor becomes a public purpose.[1]

In the Holden *v.* Hardy case, the court also stated the principles on which the powers of government are enlarged as conditions change and new facts are brought to the attention of the court through investigation: "This court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the states methods of procedure which, at the time the constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, have proved detrimental to their interests, while, upon the other hand, certain other classes of persons (particularly those engaged in dangerous or unhealthful employments) have been found to be in need of additional protection. . . . It is impossible to forecast the character or extent of these changes; but in view of the fact that, from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly to the new relations between employers and employees, as they arise."[2] Two state courts have said: "While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government."[3]

Finally a justice of the Supreme Court, in 1911, is able to identify a public benefit with public opinion regarding not only the health of a class of producers, but also regarding the welfare of any class of people, and to declare that the police power is shaped "by the prevailing morality or the strong and

[1] This, of course, was not the first time that this doctrine was asserted. Indeed, it was implied whenever a court sustained a law protecting labor. It was the first broad statement by the highest court in such a way as to make it "the law of the land."

[2] Holden *v.* Hardy, 169 U. S. 366, at pp. 385-387, 18 Sup. Ct. 383, (1808).

[3] Ritchie *v.* Wayman, 244 Ill., 509, 91 N. E. 695 (1910); quoted with approval from State *v.* Buchanan, 29 Wash. 602, 70 Pac. 52 (1902).

preponderant opinion" as to what is "greatly and immediately necessary to the public welfare." [1]

b. Equal Protection of the Laws. Another respect in which the case of Holden *v.* Hardy is the headlight of a new period is found in its opinion regarding the inequality of bargaining power of employer and employee. The opinion declared that a law, such as the one then before the court, limiting the working hours of men, was not class legislation and therefore did not conflict with the constitution which guarantees to each individual the equal protection of the laws. The reason is, as declared by the court, that the employers and their laborers do not stand upon an equality; that "the proprietors lay down the rules and the operatives are practically constrained to obey them"; that "the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health and strength," and that, even though "both parties are of full age and competent to contract," yet the legislature may interfere "where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself." [2]

In this opinion the court recognized, what had been dimly seen or implied from the beginning of labor legislation, that inequality of bargaining power is a justification under which

[1] Noble State Bank *v.* Haskell 219 U. S. 104 31 Sup. Ct. 186 (1911). Also contrary opinion in Ives *v.* South Buffalo R. R. Co., 201 N. Y. 271, 94 N. E. 431 (1911), at p. 448, where the highest court of New York said in part: "As to the cases of Noble State Bank *v.* Haskell, and Assaria State Bank *v.* Dolly, we have only to say that if they go so far as to hold that any law, whatever its effect, may be upheld because by the 'prevailing morality' or the 'strong and preponderant opinion' it is deemed 'to be greatly and immediately necessary to the public welfare,' we cannot recognize them as controlling of our construction of our own constitution."

[2] A similar opinion had been stated in 1892 by a state court (Peel Splint Coal Co. *v.* State, 36 W. Va. 802, 15 S. E. 1000 (1892), at p. 1009): "When a few persons are engaged in an extensive business and they have a multitude of customers or dependent employees and it appears that the business is of such a character that the parties do not deal upon an equal footing and that the many are at a disadvantage in their contractual relations with the few, the legislature may regulate these relations, with a view to prevent fraud, oppression, or undue advantage." See also State *v.* Brown & Sharpe Manufacturing Co., 18 R. I. 16, 25 Atl. 246 (1892); Avent Beattyville Coal Co. *v.* Commonwealth, 96 Ky. 218, 28 S. W. 502 (1894).

the state may come to the protection of the weaker party to the bargain. In earlier periods the courts had often held that capital and labor were equal, that laws favoring labor against capital were class legislation, and, even where certain courts held otherwise, the law books severely criticized them as yielding to the pressure of politics instead of bravely standing by the constitution.[1] Inequality of bargaining power has long been a ground for legislative and judicial protection of the weaker party, even though the courts found other grounds on which to base their opinions. It was early conceded as a justification of usury laws, protecting the weak debtor against the strong creditor; latterly of public utility laws, protecting the weak consumer, farmer, or shipper against the powerful corporation; and now it only needs a recognition of facts to justify labor legislation protecting the weak wage-earner against the more powerful capitalist. Such legislation could be held to deny equal protection of the laws only where the facts showed that both parties were actually equal. But where the parties are unequal (and a public purpose is shown),[2] then the state which refuses to redress the inequality is actually denying to the weaker party the equal protection of the laws.

It is by recognizing this inequality of bargaining power, coupled with a public purpose, that the courts pass over, in any particular case, from the theory of *class legislation* to the theory of *reasonable classification*. The two are identical in one respect; all classification is class legislation, but the kind of class legislation which the courts condemn is that which they consider to be "unreasonable" classification. Class legislation benefits or burdens one class against others where there is no real inequality or no public benefit. "Reasonable" classification benefits or burdens a class where there is real inequality to be overcome and a public benefit to be attained.[3] That which is class legislation at one time may become reasonable

[1] Eddy, *Law of Combinations*, 1901, Vol. I, pp. 245-247, 277; Vol. II, p. 1023.

[2] In the case of Coppage *v.* Kansas, 236 U. S. 1, 35 Sup. Ct. 240 (1915), the Supreme Court denied the application of the doctrine of inequality of bargaining power, but this was a case where the purpose was to protect trade unions against disruption by employers. What the court in effect decided was that a trade union performed a private and not a public purpose. See "The Law of Conspiracy," p. 123.

[3] See also Freund, *Police Power*, pp. 626-755.

classification at a later time, if the court perceives that what it once thought was equality is really inequality, and what it once thought was merely private benefit is also public benefit.

Thus the history of the constitutionality of labor legislation in the United States has been a history of the *theory of classification.* The conflicting opinions of various courts on the extent of the police power over private property are usually conflicting opinions on the equality or inequality of bargaining classes and on the public or private purpose subserved by the legislation. In proportion as certain classes of laborers, such as women or mine workers, are recognized by the courts as suffering an injury, and in proportion as the injured persons are deemed to be of importance to the public as well as unable to protect themselves, then legislation requiring the employer to remove the injury and prohibiting the laborer from even voluntarily consenting to the injury ceases to be overruled as "class legislation" and begins to be sustained as "reasonable classification." Even though the individual liberty of both employer and employee to make so-called voluntary contracts is restricted by the law, yet each continues to have "equal protection of the laws" because each individual is treated equally with all other individuals *of his own class.* The bargaining power of the employee is increased while that of the employer is reduced, yet all employers in a given class are treated alike and all employees in their class are similarly treated alike.[1]

This gradual transition from the time when labor was treated as equal to capital to the modern time when labor is given privileges superior to those of capital may be described as a transition from the law of *master and servant* to the law of

[1] This principle may be seen in the workmen's compensation laws. Under the former law of employers' liability the laborer carried all the expense incurred by reason of the risk of accident. The employer had certain defenses by which he could throw the cost of accidents on the employee. (See "Rules of Employers' Liability," p. 395). These defenses were held to be property rights, because they were valuable to the employer. But the legislature abolished these defenses and requires the employer to compensate *all* laborers for *all* disabling accidents. The employers are thus compelled to pay the cost of insurance against all of these risks, where formerly the laborer carried the insurance as best he could. In this way the employer's increased cost of insurance may be said, so far as the law is concerned, to have increased the bargaining power of the employee and reduced the bargaining power of the employer or of the consumer to the same extent.

employer and employee. Prior to the decade of the 'thirties the laborer could be imprisoned for debt. In other words, his creditor had rights over his body, which was looked upon as property justly belonging to the creditor as was the laborer's other property sufficient to pay the debt. This reduced the laborer to a servile state while pretending that he was equal and free. No distinction was made between the fraudulent debtor and the unfortunate debtor. Now the laborer is not treated as a criminal unless proved to be so, and his creditor consequently has no remedy which reduces the laborer to the servile state.

Next, in the decade of the 'forties, the law went further and the wage exemption laws prevented the creditor from taking even the minimum wages of the laborer in payment of a debt. Finally, the thirteenth amendment to the Constitution, by prohibiting involuntary servitude except for crime, confirmed the preceding privileges as well as the privilege of a laborer even to break his contract to labor without being forced to "specific performance." In these respects labor has been given a preference over capital, in that while both the employer and the employee can bring suits for damages on account of breaking a contract, the employer's suit is against the laborer whose small property is exempt from attachment, but the laborer's suit is against an employer whose business property as such has no exemption.[1]

Other laws are mentioned in the following chapters, showing the transition from the master-servant notion of law to the employer-employee notion. The master and servant law, while pretending to treat employer and employee alike, retained marks of that servile status in which the laborer's body was the physical property of employer or creditor. The law of employer and employee, as it develops, not only gradually removes those vestiges of past servitude, when the master could compel the servant to work, but also gives the latter a preference over capital in bargaining and a privilege to break contracts without effective penalty which the employer does not possess. In other words, the natural inequality of employer and employee reduces the latter to a servile state, reinforced by the law of

[1] Of course, the bankrupt employer has the same exemptions as the laborer.

master and servant, but the legislature, by giving preference to the weaker party, overcomes in part the inequalities of nature and secures a more real equality protected by the law of employer and employee.[1]

Thus it may be affirmed that the equality of bargaining power toward which the law of employer and employee is directed is a principle so important for the public benefit that it becomes in itself a public purpose. Many decisions of the courts base the justification of the police power, not merely upon the protection of health, safety, and morals, but squarely upon strengthening the bargaining power of laborers. In sustaining a law requiring wages to be paid in cash, the Supreme Court of Tennessee said: "The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some manner by enabling him, . . . at his election and at a proper time, to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employee upon equal ground in the matter of wages."[2] The court again approved the passage in Holden *v.* Hardy bearing on bargaining equality.

An Arkansas law, forbidding coal operators "from using screens or other devices to reduce the amount of wages that would be due on the basis of weight of coal actually mined and accepted by the operator," was upheld as constitutional upon similar grounds. The court said: "We are unable to say, in the light of the conditions shown in the public inquiry referred to, and in the necessity for such laws, evinced in the enactments of the legislatures of various states, that this law had no reasonable relation to the protection of a large class of

[1] This distinction between the law of master and servant and that of employer and employee is not technically correct. The law books include both under "master and servant." But the legislatures have broken away from these terms. In recent legislation of the more industrial states the terms used are employer and employee. This goes along with popular usage and serves to bring out, not so much the legal form of the labor contract, as the underlying purpose of equality in the wage bargain.

[2] Knoxville Iron Co. *v.* Harbison, 183 U. S. 13, 22 Sup. Ct. 1 (1901). For cases declaring similar laws unconstitutional, see Freund, *Police Power,* pp. 305, 306.

laborers in the receipt of their just dues and in the promotion of the harmonious relations of capital and labor engaged in a great industry in the state." [1]

The court argued in a like tenor in upholding an Iowa statute denying effect to any contract restricting liability or the acceptance of any insurance benefits as a defense to personal injury actions brought against railroads by their employees. In dealing with the relation of employer and employed, the court held that "the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. What differences as to the extent of this power may exist with respect to particular employments, and how far that which may be authorized as to one department of activity may appear to be arbitrary in another must be determined as cases are presented for decision. It is well established that, so far as its regulations are valid, not being arbitrary or unrelated to a proper purpose, the legislature undoubtedly may prevent them from being nullified by prohibiting contracts which, by modifications or waiver, would alter or impair the obligation imposed." [2] The court here also quotes with approval the passage from Holden *v.* Hardy relating to inequality and conflicting interest.

As summarized by Ernst Freund: [3] "Our whole economic system is based upon a very wide liberty of dealing and contract, and it is deemed perfectly legitimate to use liberty for the purpose of securing special advantage over others. The resulting disparity of conditions is not, on the whole, regarded as inconsistent with the welfare of society. Yet a different view seems to be taken of this liberty of dealing, where economic superiority is used to dictate oppressive terms, or where a degree of economic power is aimed at that is liable to result

[1] McLean *v.* Arkansas, 211 U S. 539, at p. 550, 29 Sup. Ct. 206 (1909), reprinted in Hall. *Cases on Constitutional Law*, 1913, p. 424.

[2] Chicago, Burlington & Quincy R. R. Co. *v.* McGuire, 219 U. S. 549, at p. 570, 31 Sup. Ct. 259 (1911), reprinted in Hall, *Cases on Constitutional Law*, p. 518.

[3] *Police Power*, p. 285. For the more recent checks which the Supreme Court has placed on the extension of the police power, taxing power, and commerce power, see "Minimum Wage," p. 224, and "Child Labor," p. 370.

in such oppression. The theory of legislative interference seems to be in some cases that oppression in itself, like fraud, is immoral and wrong either against the individual affected thereby or against the public at large; in other cases, that the excessive dependence of whole classes of the community threatens, though perhaps only remotely, the social fabric with grave disturbance or ultimate subversion and ruin."

CHAPTER II

INDIVIDUAL BARGAINING

In the broadest sense of the term, a debt is that which is due from one person to another, whether money, goods, or services.[1] The laborer as debtor may, therefore, be looked upon as owing either labor or money to another. Modern law does not force a laborer to work out his debt. It converts a labor debt into a money debt, or "damages," and enforces payment of the latter. Furthermore, under "exemption" laws, the law does not always enforce even the total payment of a money debt.

On the other side, the laborer is a creditor to the extent that the employer owes him money for his labor. Here, too, modern legislation gives him certain privileges or protection, not usually given to other creditors.

It is in this twofold relation of debtor and creditor that we trace the history of labor law from the servile stage, through the stage of master and servant, to the modern stage of employer and employee.

1. The Laborer as Debtor

If we classify the legal relations of the laborer as debtor we shall begin with the employment of labor in its elementary form of slavery, where all of the rights were on the side of the owner and all the obligations on that of the laborer. This, and a succeeding or contemporary stage of serfdom, are known as a period of *status*. The laborer is born to the position and does not enter it by agreement or contract. But status often merges into contract, or the fiction of a contract, and we may therefore speak of a servility stage, or a stage of servile contracts, preceding that of free contracts. Here would be classified slavery, serfdom, and peonage. These conditions of labor, even if based on contract, may be so evidently the outcome

[1] Kimpton *v.* Bronson, 45 Barb. 625 (1866).

of coercion that they may rightly be considered as belonging to a pre-contract or servile stage.

A second stage, which we may designate as that of master and servant, emerges gradually from the more liberal forms of servile contracts, although retaining vestiges of servile relations. Some of the contracts of this stage, especially the seaman's contract, have continued down to the present day, while others, such as apprenticeship, indentured service, and contract labor, can with difficulty be distinguished from those of the servile stage. The ameliorating character of both the servile and master stage is that of paternalism, and both of them are closely connected with the institution of the family, in which the wife and children occupy a position of status, afterward modified by contract, express or implied.

Modern labor legislation, as understood in this book, begins with a conscious effort on the part of the legislature to remove both the servile and paternal vestiges of the master and servant stage and to substitute a stage of real equality, as far as possible. This we designate as the employer and employee stage.

(1) *Servile Labor*

a. Slavery. The worker under primitive slavery is regarded as the property of his master. In Roman law a slave was regarded not as a person, but as a thing.[1] In 1776 Mr. Justice Chase of Maryland said: "Negroes are property, and no more members of the state than cattle."[2]

In England, in 1772, it was held by the court that slavery could not exist in the mother country. The slave trade was abolished by statute there in 1807, and in the colonies in 1833. The example of Great Britain in regard to her colonies was gradually followed by other European states, by France in 1848, Portugal in 1858, Holland in 1863. Spanish-American states abolished slavery after securing independence. In the United States the slaves were freed in 1865 by the thirteenth amendment to the federal constitution, as an outcome of the

[1] Sohm, *Institutes of Roman Law*, tr. Ledlie, 1901, p. 171.

[2] Wilson, *History of the Rise and Fall of the Slave Power in America*, n. d., Vol. I, p. 15.

Civil War, and Brazil, the South American state which retained slavery longest, abolished it by decree of the Chambers in 1888.

b. Serfdom. Slavery aims at the subjection of the whole man. Another degree of unfreedom, namely, serfdom or villeinage, does not attempt to cover the entire range of human life. It is concerned only with certain relations, generally economic in character. Compulsory labor—compulsion as to the kind of service and the time and place where it is to be rendered—is the essential note of serfdom or villeinage. A serf was bound to the land and bought and sold with it, like cattle, but he might secure freedom by "commutation," that is, by paying to the lord or master who had the title to the soil a sum of money or an annual payment presumably equivalent to the value of the service which he rendered his lord. He substituted a money debt for a labor debt—in other words, he bought his freedom. Serfdom appears as a corollary of feudalism. It grew up as a consequence of customary subjection in an agricultural system and melted away with the advent of the industrial age.

c. Peonage. Peonage has been defined as a "status or condition of compulsory service based upon the indebtedness of the peon to the master." [1] The basic fact is indebtedness. In Mexico, after the Spanish conquest, slaves were used in mines and on roads, while serfs or peons were used for agriculture. The condition of the latter, though differing little from slavery, was theoretically more humane and right-respecting. Together with peonage, a system of large estates grew up. The peons got food and clothing from their masters.[2] These Mexican peons are descendants of natives enslaved by the Spaniards, and are often merely bondsmen.[3] Their wages are low and they are compelled to deal at the store of the estate. They are always kept in debt, and until the Mexican Constitution of 1917 abolished involuntary servitude except as a punishment for crime, an Indian workman owing his employer became the property of the latter.[4] Some-

[1] Clyatt *v.* U. S., 197, U. S., 207, 25 Sup. Ct. 429 (1904).
[2] United States Bureau of Labor, *Bulletin No. 38*, 1902, p. 23.
[3] W. E. Carson, *Mexico*, 1914, p. 185.
[4] *Ibid.*, pp. 188, 189.

times peons are induced to contract for work to be done in tropical parts, and here they get into debt at once and are prevented by armed guards from escaping.[1]

In the United States, after the abolition of slavery by the thirteenth amendment in 1865 the proprietors, being deprived of their property right in the services of the slave, sought in some cases to effect the same purpose by indirect means, such as enforcing indebtedness and compelling the working out of the debt. These subterfuges gave added impetus to the agitation which led to the adoption, two and a half years later, of the fourteenth amendment, which created a citizenship of the United States in addition to that of the state, and prohibited any state from depriving a citizen of the United States of "life, liberty, or property without due process of law," or denying "to any person within its jurisdiction the equal protection of the laws." [2]

In 1875 the United States Congress passed statutes which have been thought to enforce the meaning of the thirteenth amendment. That they do not entirely accomplish this is pointed out by the Immigration Commission of 1911.[3] One statute provides heavy fines for those who "conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured him by the constitution of the United States";[4] and another for "every person who kidnaps or carries away any other person, with the intent that such person be sold into involuntary servitude, or held as a slave." [5] But, as the Immigration Commission shows, "if a person simply places or holds another in slavery, it is impossible for the federal courts to impose penalties under statutes at present in vogue (1911), unless the placing or holding be for the purpose of forcing the settlement of a debt, no matter how great may be the abuses perpetrated upon the person held. In the Clyatt case, the Supreme Court decided unmistakably that the peonage statute (R. S. 5526) referred

[1] *Ibid.*, p. 191. See also Ely, *Property and Contract*, 1914, chap. X.
[2] Constitution of the United States, Fourteenth Amendment, Sec. 1, in force July 28, 1868.
[3] Immigration Commission, *Abstracts of Reports*, 1911, Vol. II, p. 446.
[4] United States Revised Statutes, 1898, Sec. 5508.
[5] *Ibid.*, Sec. 5525.

only to cases where the return or arrest or holding has been for the purpose of paying a debt." [1]

The chief origins of the enforced indebtedness upon which peonage rests are advances made by the employer to the laborer, misrepresentations made to laborers by unscrupulous employment agents, the payment by an employer of fines and costs in cases of misdemeanor, especially violations of vagrancy laws, and the operation of contract labor laws. Advances to laborers might include payments for transportation, working equipment of various sorts, and any payment in kind, such as food, clothing, or housing, accomplished through company stores and land ownership. An example is found in the state of Maine, where advances are made to laborers sent out by employment agents who "misrepresent conditions in the woods, and frequently tell the laborers that the camps will be but a few miles from some town where they can go from time to time for recreation and enjoyment. Arriving at the outskirts of civilization, the laborers are driven in wagons a short distance into the forests, and then have to walk sometimes sixty or seventy miles into the interior, the roads being impassable for vehicles. The men will be kept in the heart of the forest for months throughout the winter, living in the most rugged fashion and with no recreation whatever." [2] Similar practices of deceit were exercised by the agencies which send labor from New York to the South.

Abuses of the vagrancy laws were found to occur in the South, involving both negro and white laborers.[3] In Florida, for instance, "common pipers and fiddlers, common railers and brawlers" may be arrested under the vagrancy law of 1905, and fined not more than $250 or imprisoned not more than six months. Other states of the South make it quite easy for arrests to be made under these statutes. The victim is usually a negro who, for a trivial offense, or no offense at all except being unemployed, will be arrested and charged with vagrancy. He gets little consideration from the local justices, and his fines are so high that he is unable to pay them. An employer

[1] Immigration Commission, *Abstracts of Reports*, Vol. II, p. 446. See also Clyatt *v.* U. S., 197 U. S. 207, 25 Sup. Ct. 429 (1904).

[2] *Ibid.*, p. 447.

[3] United States Department of Justice, *Annual Report of the Attorney-general*, 1907, Exhibit 17, pp. 207-213.

appears and advances the fine on the condition that the laborer will work out his debt. When the debt is worked out, and the negro is again unemployed, perhaps, he will be rearrested on similar charges, and in such manner becomes virtually a peon. Occasionally, a victim is not allowed to pay the fine when he has the money; he will be imprisoned and word sent to a planter, who comes in and pays his fine and then takes possession of the unfortunate criminal, who is obliged to work off his debt. In most cases this is as hopeful a proceeding as borrowing from a mediæval usurer, for at the end of months of toil the laborer may find himself as deeply in debt as ever.[1]

Although the Immigration Commission reported that in every state except Connecticut and Oklahoma there had occurred sporadic cases which, if supported by legal evidence, would constitute peonage as the Supreme Court has defined it, nevertheless no general system of peonage, and no sentiment supporting it were found. In the South, where such practices were most frequent, prosecution by United States district attorneys was vigorous and usually successful.[2]

(2) *From Master and Servant to Employer and Employee*

In the master and servant stage we have the beginnings of the contract. In some cases the contract is very elementary in form, while in others it approximates closely the free labor contract. It is the first expression of the idea of equality between the laborer and his employer. The master was at liberty to hire whomsoever he wished, and, on the other hand, the servant could work for any master he chose. The master was not free to discharge his servant during the term of the contract, nor the servant free to quit his master and to work for another. The laborer was to serve the master faithfully, keep his secrets, obey his lawful commands, and guard his interests. On the other hand, the master was to give his servant a living, to protect him, and look after his welfare.

a. Indentured Service. The slave, the serf, and the peon perform their labor under a fixed status, and the individual

[1] M. C. Terrell, "Peonage in the United States," *Nineteenth Century and After,* Vol. LXII, 1907, pp. 312, 313.

[2] Immigration Commission, *Abstracts of Reports,* Vol. II, p. 445.

has little or nothing to say about it. The indentured servant had in some particulars the right of a servant in making a contract, and in other respects he was little more than a slave, except that his chances for ultimate freedom were more real. Indentured labor is peculiar to new countries where labor is scarce, and where opportunity for individual enterprise is great. People were shipped from the old world to the American colonies to supply the need for young, healthy, energetic laborers for the development of the new. Children were sometimes shipped under the Elizabethan statute of apprentices.[1] White indentured service is mentioned in laws of all the thirteen colonies.[2] The dates 1619 to 1819 may be taken as indicating roughly the beginning and end of the system. Competition with slavery destroyed it in the South before the end of the eighteenth century, but it continued to exist in the Northern states into the nineteenth century. White servitude was hampered by too many considerations in favor of the laborer; above all, the white servant's labor belonged to his master only for a term of years, after which he was as free as anyone else, while the slave's services were property during the term of his life.

b. Apprenticeship. Apprenticeship proper differs from indentured service in that the master obligates himself to teach the apprentice a trade. If this obligation does not appear in the contract, or is not enforced, the apprentice becomes in fact an indentured servant.[3] Thus many who came to America under what purported to be apprenticeship contracts were in reality indentured servants. The two merged into each other in another direction, in that an apprentice could be bound for seven years to learn a trade which could be learned as well in three. Four years' enforcement of such a contract would be really indentured service, and only three years' would be true apprenticeship.[4] Where regulated by the state, as in

[1] 5 Eliz., C. 3 and 4 (1563).
[2] Hurd, *Law of Freedom and Bondage in the United States,* 1858, chap. VI.
[3] Abbott, *Women in Industry,* 1910, p. 331.
[4] See J. M. Motley, *Apprenticeship in American Trade Unions,* "Governmental Regulation of Apprentices," Johns Hopkins University Studies, 1907, Vol. XXV, p. 494.

Wisconsin, these objectionable features are eliminated and the period of indenture is wholly educational.[1]

c. Contract Labor. Midway between indentured service, on one hand, and the padrone system on the other, is contract labor. This form of labor, although apparently built on freedom of contract, results in compulsory service or in peonage practices. It is the kind of labor contract whose performance can be enforced at law, and has been quite common where large numbers of natives of backward races have been employed, as in the Hawaiian Islands, the Philippines, the West Indies, and in South Africa, where Chinese coolies were employed in the mines.

In many respects, contract labor closely resembles peonage, as we have previously suggested, for it places the laborer in the position of a debtor owing services, yet there is a difference between the two. Peonage involves continuous or indefinite service, as long as a balance of debt continues, which may be permanent. Contract labor pertains to a term of years only, after which the laborer cannot be compelled to work. Furthermore, should the laborer renew his contract because of economic pressure, still it is only for another term of years. Contract labor results in servitude for a definite period only, while it leaves the way open to freedom. It is possible, however, that abuses of the system may lead very easily to a state almost as bad as peonage, and it is this possibility that has made contract labor unpopular in freedom-loving countries and has led to legislation aiming at its restriction and abolition.

In the Hawaiian Islands, a condition of contract labor existed for fifty years. In order to solve the problem raised by the scarcity of labor combined with the opportunity for industrial development, the employing class got a law enacted in 1850 by which laborers over twenty years of age could contract themselves to service for not more than five years. Refusal to work on the part of such a person was punished by imprisonment with hard labor. The man who tried to escape and was caught could be bound to double the original term of service. A later amendment added to the punishment for a second desertion

[1] Wisconsin Statutes—1925, Sec. 106.01, Sec. 9.

three months' hard labor for the state.[1] This condition of contract labor was abolished in 1900 by a clause in the organic act settling the conditions of annexation to the United States.

While the performance of labor cannot be compelled by direct means, except where life and property are endangered, or public necessity and convenience demand it, yet indirect devices are invented to effect the same thing. Statutes which deal with "employers' advances" make it a misdemeanor for the employee to fail in the performance of his contract to work off a debt. As imprisonment for debt has been prohibited by law, the only means by which these contract labor laws can be made effective is to couch them in such terms as to make the laborer breaking his contract appear to be guilty of getting money or provisions under false pretenses. Intent to defraud must be shown, since a mere breach of the labor contract is not a crime.[2]

The law of Alabama provides that "the refusal of any person who enters into such contract to perform such act or service, or refund such money, or pay for such property without just cause, shall be *prima facie* evidence of the intent to injure his employer, or to defraud him."[3] The statute of Maine, enacted in 1907,[4] treating of contract labor, does not state that failure to perform the debt is *prima facie* evidence of intent to defraud, but judicial interpretation has had the same result.[5]

Prosecutions under such statutes, however, have been invalidated by a sweeping decision of the United States Supreme Court in a leading case.[6] Here the court stated: "The fact that the debtor contracted to perform the labor which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute (prohibiting peonage). The full intent of the constitutional provision could be defeated with obvious facility if, through the guise of contracts under which advances had been made, debtors could be held to compulsory service. It is the compulsion of the service that the

[1] Katherine Coman, "Contract Labor in the Hawaiian Islands," *American Economic Association*, 3d Series, Vol. IV, 1903, pp. 492-493, 531.
[2] *Ex parte* Riley, 94 Ala. 82, 10 So. 528 (1891).
[3] Alabama, Code 1896, Sec. 4730, as amended 1903 and 1907.
[4] Maine, Laws 1907, C. 7.
[5] Immigration Commission, *Abstracts of Reports*, Vol. II, p. 448.
[6] Bailey *v.* Alabama, 219 U. S. 219, at p. 242, 31 Sup. Ct. 145 (1910).

statute inhibits, for when that occurs the condition of servitude is created, which would be not less involuntary because of the original agreement to work out the indebtedness. The contract exposes the debtor to liability for the loss due to the breach, but not to enforced labor. . . . The act of Congress (Act of 1875) deprives of effect all legislative measures of any state through which, directly or indirectly, the prohibited thing, to wit, compulsory service to secure the payment of a debt, may be established or maintained." This decision delivered in 1910 invalidated laws of like nature in other states,[1] for the court observed: "No question of a sectional character is presented and we may view the legislation in the same manner as if it had been enacted in New York or Idaho. Opportunities for coercion and oppression in varying circumstances exist in all parts of the union, and the citizens of all these states are interested in the maintenance of the constitutional guarantees the consideration of which is here involved."[2]

Until very recently, seamen have generally stood on a different footing from other employees, for with them enforced contracts were permitted and the law as to involuntary servitude has not been applicable. In the case of Robertson *v.* Baldwin[3] the court stated: "Seamen are treated by Congress as well as by the Parliament of Great Britain as deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults, and as needing the protection of the law in the same sense in which minors and wards are entitled to the protection of their parents and guardians." Since the date of that case, however, the law of the United States affecting seamen has been changed and more freedom has been granted. A law[4] of the Sixty-third Congress abolishes arrest and im-

[1] Arkansas, Florida, Georgia, Louisiana, Michigan, Minnesota, New Hampshire, New Mexico, North Dakota, South Carolina, and Virginia. See United States Bureau of Labor Statistics, *Bulletin No. 148*, "Labor Laws of the United States," 1914, and annual supplements to 1918, *Bulletins No. 166, 186, 213, 244, 257.*

[2] Bailey *v.* Alabama, 219 U. S. 219, at p. 231, 31 Sup. Ct. 145 (1910).

[3] Robertson *v.* Baldwin, 165 U. S. 287, 17 Sup. Ct. 326 (1897).

[4] United States Laws 1914-1915, C. 153; Revised Statutes, Secs. 4529, 4530, 4596, 4610, 4611. Title: An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion, and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea.

prisonment as a penalty for desertion. It goes so far as to stipulate that it shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from seamen's wages. This is a clear effort to prevent the obligation of indebtedness on which involuntary servitude is based.

The law goes further and provides that for quitting the vessel without leave after her arrival at the port of her delivery, and before she is placed in security, a seaman forfeits from his wages not more than one month's pay. This approaches the free contract perhaps as far as the conditions of seafaring will permit. Congress regulates the nature of the contract, the term of service, the payment and assignment of wages, advance payments and credits, the regulation of sailors' lodging houses, of shipping masters, quarters on board ship, rations, and many other details.

Railroad employees also come within the power of Congress, and it was a federal court which, while reiterating the general right of employees to quit work, suggested by way of dicta that "his quitting would not be of right and he would be liable for any danger resulting from a breach of his agreement and perhaps in some cases subject to criminal prosecution for loss of life and limb, by passengers or others, directly resulting from his abandoning his post at a time when care and watchfulness were required upon his part in the discharge of a duty he had undertaken to perform." [1] Laws on this subject, excepting that of Connecticut, connect the cessation of work with combinations and strikes,[2] and forbid engineers and railroad employees to abandon locomotives under circumstances of this nature, under penalty of fine and imprisonment.

d. Padrone System. The padrone system is one step removed from contract labor. Those who work under this system permit a leader, the padrone, to make their contracts, yet the agreement is not enforceable at law. It is enforced only by their own necessities. The system started first with Italian laborers. The padrone brought over laborers from Italy, ad-

[1] Arthur *v.* Oakes, 11 C. C. A. 209, 63 Fed. 310 (1894).
[2] Delaware, Illinois, Kansas, Maine, Minnesota, New Jersey, Pennsylvania.

vancing the cost of their transportation, and hired them out to a contractor. He rented to them the shanties in which they lived while at work, and sold them supplies of food.

Italian laborers formerly made contracts with their padrone to serve him for one to three years, and occasionally for a longer period.[1] The report of the Immigration Investigating Commission of 1895 shows that Italians and other foreigners had been imported "by the cargo" into the Michigan iron-mines and worked on the padrone system in the early 'nineties.[2] This was probably the time when the padroni were the most numerous and flourishing.

Formal agreements among the laborers and the padroni are being discontinued, and for this there are perhaps three reasons. First, because the alien contract labor laws make their agreements not only unenforceable at law, but actually punishable if discovered by the government. Secondly, spontaneous immigration from Italy became so great before 1920 that it was not worth the padrone's while to risk a conviction under the contract labor laws, so that he became merely a middleman. Thirdly, condition of dependence on one side and assistance on the other. The padrone did not establish his control over a man, strictly speaking, either by force or fraud. Dr. Rossi calls the padrone system "the forced tribute which the newly arrived pays to those who are acquainted with the ways and language of the country."[3] The system was founded on an inequality more deeply rooted than the usual inequality between the employer and the laborer. The races which work under this method are ignorant and accustomed to be commanded, and it is on their dependence and lack of knowledge that the power of the padrone rests. Seen from the standpoint of the immigrant, a remedy is to be found not so much in legal rights, as in better education, American habits of thought, efficient employment bureaus, and more adequate administration of existing laws.

e. Imprisonment for Debt. Not only as a debtor-laborer, but also as a debtor-consumer, the laborer receives consideration. Imprisonment for debt originally had no particular bear-

[1] Industrial Commission, *Report,* Vol. XV, 1901, pp. 430-432.
[2] Immigration Investigating Commission, *Report,* 1895, p. 26.
[3] Industrial Commission, *Report,* Vol. XV., 1901, p. 432.

ing on the labor contract or its history. The fundamental idea in the ancient German imprisonment for debt is the indirect compulsion to pay. The debtor was to be encouraged to pay what he owed by being made uncomfortable until he did so. Compulsion to work had given place to compulsion to pay.[1]

The abolition of imprisonment for debt was one of the issues raised by the early workingmen's parties in 1827. Kentucky, the first state to abolish imprisonment for debt, had already done so in 1821. New York followed ten years later, and a series of legislative and constitutional provisions followed at intervals throughout the country. Inability to pay one's debts, if not accompanied by embezzlement or other fraudulent conduct, is now no longer a reason for imprisonment in civilized countries.[2]

f. Wage Exemption. Following the abolition of imprisonment for debt is the wage exemption legislation which took on large proportions in the United States in the 'forties. At the present time every state in the union has legislation exempting wages from attachment and execution for debt. In other words, the authority given to the sheriff or other administrative officer to seize from the property of the defendant (debtor) a sufficient amount to satisfy the judgment in favor of the creditor, is invalid when applied to wages under the exempt amount. The persons covered by these laws are differently specified in different states. Several provide for exemption of "all laborers, mechanics, and day laborers," as in Georgia; "residents of the state," as in Idaho; "resident debtor," as in Iowa; all "householders," as in Indiana; "judgment debtor," as in New York; and "all who support themselves and their families by the labor of their hands," as in Wisconsin.

The amount of wages exempted varies somewhat from state to state. Some exempt ninety days' wages as in Iowa, others sixty or thirty, while still others stipulate the percentage which may be collected for a given period. In Missouri and Kansas, 90 per cent of a worker's earnings for the preceding three months is exempt. The exempted amount runs from

[1] Th. Niemeyer, "Schuldhaft," *Handwörterbuch der Staatswissenschaften*, Vol. V, 1911, p. 593.

[2] An important discussion of existing imprisonment for debt in England is found in E. A. Parry, *The Law and the Poor.*

$15 in Illinois to not more than $180, as in Wisconsin. The usual period of exemption, in so far as the time is specified at all, is the two to three months preceding attachment. The wages of a minor child are exempt in many of the states. In all cases, it is clear that the purport of the laws is to protect the minimum earnings of the workingman who has nothing to depend upon except his wages.

Wage exemption applies not only against execution or attachment, but also against garnishment.[1] This is a proceeding by which the plaintiff in an action seeks to reach the rights and effects (wages in this case) of the defendant by calling into court some third party (employer) who has such effects (wages) in his possession or who is indebted to the defendant.[2] Should the employer unwarrantedly make payments from his employee's wages, he will still be left liable to the employee himself for a second payment of the wages.[3]

g. Homestead Exemption. All American states have provided that the means of earning a livelihood, that is, the tools of one's trade or profession, shall be exempt from execution. Along with the exemption of personal property goes homestead exemption. This legislation is designed to keep intact the family unit in society, to prevent entire destruction, and to encourage a debtor who has been reduced to the last term to try again. These laws, however, are not for laborers alone, but for any person. In most states a man must be a householder or the head of a family in order to get the exemption, but in a few states any person may be entitled to the exemption. The limitations on the homestead exemption are in both acreage and value. Rural homesteads may vary in acres from 40 to 100, and city homesteads from one lot to one acre (five acres in one state). Maximum monetary limits are $500 to $5,000. In Nebraska, homesteads are not exempt from execution of judgments on debts secured by mechanics, laborers, or vendors, liens upon the premises.[4]

[1] Clark, *Law of the Employment of Labor*, 1911, p. 56.

[2] *Cyclopædia of Law and Procedure*, Vol. XX, 1901-1914, p. 978. "While a garnishment proceeding accomplishes the same purpose as an attachment or execution, it is in no sense a levy on property, but a judicial proceeding by which a new judgment is obtained."

[3] See Clark, *Ibid.*, p. 55, and cases cited.

[4] Nebraska, *Compiled Statutes*, 1922, Sec. 2818.

In 1848 English statutes provided only that tools and actual necessaries of judgment debtors were not to be seized in execution. In 1883 a statute carried the exemption a little further, so as to include "the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds ($100) in the whole."[1] These provisions have parallels in most of the British colonies, and the exempted property amounts to about the same. Nowhere, however, is the exemption as liberal as in the United States. Homestead exemptions are peculiar to the United States, but the tools of a debtor's trade, at least, are exempted in most English-speaking countries.

h. Assignment of Wages. Assignment of wages grows out of the legal act of transferring or making over to another of the whole or part of any property, real or personal, in possession or in action, or of any estate or right therein. But if the wage-earner is to have effective exemption of wages from attachment and garnishment, it is consistent that he be prevented from making an assignment of his future wages. Assignments of unearned wages are safeguarded in various ways, as by requirement that they must be recorded, that copies must be filed with the employer, or even that the employer's consent must be obtained, or that the wife must join in the husband's assignment, or *vice versa*. Missouri affords a good example of effort to modify this evil. An act of 1911 provides that "all amounts of wages, salaries, or earnings must be in writing with the correct date of the assignment and the amount assigned, and the name or names of the party or parties owing the wages, salaries, and earnings so assigned, and all assignments of wages, salaries, and earnings not earned at the time the assignment is made shall be null and void." Assignments to secure loans or future advances are void in Georgia and Massachusetts, and all assignments of future earnings are prohibited in Indiana.

2. The Laborer as Creditor

Modern industry is conducted mainly "on credit." The employer is the middleman, whose creditors are those who advance

[1] 46 and 47 Vict., C. 31, Pt. IV, Sec. 44.

the capital he uses, and whose debtors are those who buy his product. When the laborer starts to work for him, he also becomes, for a time, a creditor. He contributes his services in advance of compensation. He is a temporary investor in the business. While he works, he passes over to the employer the title to his product, and retains a claim for wages. When his wages are paid his investment is liquidated.

Other investors advance money or "credit." Their contracts are secured by notes, bonds, mortgages, giving to them a preferred claim on the property and earnings of the business. They invest "capital"—the laborer invests "labor." Laws regulating the time, place, and medium of payment, laws providing for mechanics' liens, wage preference, and so on, are intended to guarantee to the laborer as creditor, regardless of contract, that certainty of payment which the capitalist as creditor secures in the ordinary enforcement of contracts.

(1) *Time of Payment*

Legislation has not ventured until recently[1] to interfere directly and set the amount of wages, but it makes the amount of wages greater or less by indirect methods. Whatever the nominal amount may be, the frequency of the time of payment is a matter of concern to the laborer. The longer he must wait for his wages the greater is the extent of his need for credit, and, accordingly, the higher will be his cost of living and the lower his real wages. The advantages of fewer pay days are obvious to the employer. His cost of bookkeeping is less, and his required circulating capital will be less.

Over the entire world in industrial states there are statutes requiring a regular pay day, which may be once a month, semi-monthly, or weekly. Many of the European laws are so phrased that modifications may be introduced according to local custom.[2] The Swiss government makes it incumbent upon the master to pay wages at any time according to work done, so as to enable the servant to meet any special need, and the interpretation of the law is left to administrative officers.[3]

[1] See chap. IV, "The Minimum Wage."

[2] For example, the Netherlands, *Bulletin of the International Labor Office*, Vol. II, 1907, p. 411.

[3] Federal act to supplement the Swiss federal code, March, 1911, *Bulletin of the International Labor Office*, Vol. VI, 1911, p. 96.

Two-thirds of the states of the United States, and Hawaii, have laws dealing with time and mode of payment of wages. Most of these laws provide for semimonthly payment, and most of them stand without being contested in the courts to determine their constitutionality. Some cases have reached the courts, and different decisions have been rendered.

In favor of the validity of such laws, it has been argued that semimonthly payment of wages is required by the actual necessities of employees, and that regular payment of wages at short intervals is much more a matter of life and death to a workingman with a family dependent on him than to the employing corporation.[1] The purpose of the Rhode Island weekly payment law was laid down by the court as being protection of the worker from "the greed of corporate capital." Poverty and weakness, it was said, "can wage but an unequal contest with corporate wealth and power"; and the act was considered to be for the prosperity and comfort of the workingmen, who depend entirely on their weekly wages, and are, like other people, obliged to pay for credit.[2]

The cases in which laws relating to time of wage payment have been held unconstitutional show, as might be expected, that less consideration was given to the practical economic facts of the situation. In these cases appears the usual argument that the liberty of contract of the workingman is encroached upon by legislation. In the case of Johnson *v.* Goodyear Mining Co.[3] an indignant protest was raised by the court against any interference with the liberty of contract. "The workingman of intelligence," it was said, "is treated as an imbecile. Being over twenty-one years of age, and not a lunatic or insane, he is deprived of the right to make a contract as to the time when his wages shall fall due."

There are several states which legislate to the effect that wages shall be paid during working hours. This accomplishes two things: it saves the time of the employee and precludes payment in barrooms. In Austria the time for payment of wages to mine workers is reckoned within the duration of the

[1] Arkansas Stave Co. *v.* State, 94 Ark. 27, 125 S. W. 1001 (1910).
[2] State *v.* Brown & Sharpe Mfg. Co., 18 R. I. 16, 25 Atl. 246 (1892), at p. 252.
[3] Johnson *v.* Goodyear Mining Co., 127 Cal. 4, 59 Pac. 304 (1899).

shift.[1] In Massachusetts, where there are 100 or more persons employed in any establishment, wages are to be paid during working hours. In France payment of wages must not be made on days kept as rest days for employees.[2] The law of Greece is fairly representative of those of some other countries: it provides that wages shall be paid not later than the time when daily work is concluded, and that in undertakings with more than 200 workers the manner of paying wages may be regulated by administrative order.[3]

Most of the states and countries provide that an employee shall be paid immediately upon discharge, and for delay thereafter is entitled to interest charges—in the case of Iowa $1 a day penalty up to twice the amount of the wages due. In some cases this penalty is 5 per cent a year to be added for the cost of the delay, and the attorney's fee if his services are necessary to procure wages withheld from an employee. The Supreme Court of Indiana,[4] however, held that the provisions that the employer must pay wages within seventy-two hours after discharge or leaving with a penalty of $100 to $500 was an unreasonable deprivation of property. When an employee quits, the law generally stipulates that he shall be paid at the next regular pay day.

(2) *Place of Payment*

The evil attached to the payment of men in saloons needs no elaboration, and it is to be noticed that this evil is partly taken care of in some places by providing that wages shall be paid upon the premises, as in Servia and Berne. This coincides with most of the legislation of the American states on the subject. California and Nevada, however, specifically provide that payment of wages shall be made to no one in barrooms except it be those employed therein. Austria, Belgium, France, Germany,[5] and Great Britain [6] have all legislated against payment of wages in public houses and taverns.

[1] *Bulletin of the International Labor Office*, Vol. VII, 1912, p. 246.
[2] *Lois, Décrets, Arrêtés concernant la Réglementation du Travail*, Bk. I, chap. II, Sec. II Art. 46.
[3] *Bulletin of the International Labor Office*, Vol. VII, 1912, p. 290.
[4] State *v.* Martin, 193, Ind. 120, 139 N. E. 282 (1923).
[5] Great Britain, Departmental Committee on Truck Acts, *Report*, 1908, pp. 96, 97.
[6] 46 and 47 Vict., C. 31 (1883).

(3) *Basis of Payment*

In the United States there are some statutes that prohibit the screening of coal before it is weighed, the loss of coal through the screen being regarded as causing an unjust loss to the miner, whose contract calls for payment by the weight of coal mined. The validity of such laws has been both upheld and denied by different state courts, but in the case of McLean *v.* State of Arkansas [1] the Supreme Court held the law to be within the police power of the states.

(4) *Medium of Payment*

Carlyle declaimed against a modern civilization whose only bond of union is the cash nexus. Yet, from a different point of view, it may be said that liberty depends on cash. Indeed, the transition from slavery to freedom is a transition from payment in lodging, board, and goods, or "truck," to payment in legal tender or in a medium convertible into money on demand at its face value. Cash means freedom. It permits the wage-earner to buy what and where he wants. It also means earnings, for it exposes and corrects unwarranted deductions, such as high prices, through bookkeeping accounts.

a. "Living In." Under systems of slavery, serfdom, indentured service, and apprenticeship the laborer lived on the premises of his master. The most complete survival of these systems in modern industry is known in England as "living in," where the employee receives part payment in board and lodging at his place of employment. The system is encountered in all countries, and is characteristic of domestic service. Very often, "living in" is made a condition of employment, either express or implied, and the board and lodging accommodations provided are often inferior and inadequate. The system may rob the employees of their sense of personal responsibility and check individuality and independence of character. There is frequently no freedom of complaint, for, if the workers venture to remonstrate about food or lodging, they render themselves liable to dismissal and "spoiling" their references. In Great Britain the committee on the truck acts in 1908 recommended

[1] McLean *v.* Arkansas, 211 U. S. 539, 29 Sup. Ct. 206 (1906).

regulations as to accommodations provided in "living in" establishments, but did not seem to have a clear case for the abolition of the system. A minority report, however, advocated its entire abolition.[1]

In Berne the law of 1908[2] requires that food provided for the employees must be sufficient and wholesome and that the accommodation must satisfy all sanitary requirements. In Austria the administrative authority may determine by order that, in the case of undertakings of a certain kind or situation in certain districts it shall be unlawful to provide board or lodging for the employees as a part of their remuneration.[3] In South Australia the occupier of an establishment and the members of his family are prohibited from lodging and boarding adult persons in his service, in the case of those whose wages are fixed by wage boards, exception being made in the case of hotels, clubs, restaurants, and the like.[4]

In the United States the subject of "living in" has not yet come into the realm of legislation, but it exists in hotels, restaurants, bakeries, and clubs.

b. Company Houses and Labor Camps. The employer may build "company houses" for his workmen which they must occupy, and the rent is then deducted from wages. Frequently these houses are better than those which the employees would provide, but they have counteracting disadvantages in contractual ties of dependence. In New York where factory operatives are given living quarters, these may be regulated by the industrial commission, which has power to enter and inspect.[5] Labor camps for certain kinds of work have been brought under regulation in certain states, as California,[6] New York,[7] and Pennsylvania.[8] In California the state board of health is ordered to condemn any camps which are dangerous to public health. After 1920, Montana, New Mexico, Oregon, and Alaska passed laws prohibiting coercion as to boarding houses.

[1] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, Vol. I, p. 78; *Minority Report*, Vol. I, p. 84.
[2] *Bulletin of the International Labor Office*, Vol. III, 1908, p. 122.
[3] *Ibid.*, Vol. V, 1910, p. 203.
[4] *Ibid.*, Vol. VII, 1912, p. 20.
[5] New York, Laws 1913, C. 195.
[6] California, Laws 1913, C. 182.
[7] New York, Laws 1913, C. 195.
[8] Pennsylvania, Laws 1915, No. 397, Sec. 18.

c. Company Stores. The "truck" system, or "truck" in English usage, is the term which denotes payment in kind, or otherwise than in cash.[1] In the United States this is generally treated under such terms as "store orders," "payment in scrip," or "company stores." Legislation respecting the truck system falls into three classes: (1) Laws that would eliminate it altogether, at least in business establishments where it is a real evil, such as mining, manufacturing, and railroad corporations. (2) Laws which permit the system, but which regulate the prices charged and the quality offered. (3) Laws which allow the institution to exist, but which endeavor to eliminate coercion of employees to make use of the system.

Among the first class would come the laws of many of the leading industrial states, such as Maryland, Massachusetts, Colorado, New Jersey, New York, and Pennsylvania, and France of the European countries—the latter having, perhaps, the most complete law aiming at the abolition of the entire system.[2]

The second class includes Connecticut, Indiana, and Virginia. Here prices must not be unreasonable, or higher to the employees than to others who are not employees. Of course, if the town should be owned by the corporation, the law could not have much effect, and, for that matter, no anti-truck legislation can accomplish much for the laborer in a town where the land and buildings are all owned by the employing corporation.

In the third class would fall the laws of a dozen other states, mainly in agricultural areas, and the laws of practically all the foreign countries, omitting Holland and Italy, which have no such general laws.

The last two groups have this in common, that both regulate prices. Although penalties provided seem to be ample, yet in the United States the administrative features are weak, as typified by the case of Colorado,[3] where, if the attorney-

[1] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, p. 4.

[2] *Bulletin of the International Labor Office*, Vol. V, 1910, p. 377; Act suppressing truck shops and prohibiting employers from selling, directly or indirectly, to their workmen and employees supplies and goods of any kind, March 25, 1910.

[3] Colorado, Revised Statutes, 1908, Sec. 6995.

general should fail, neglect, or refuse to act after a demand by a responsible party, any citizen has a right to institute proceedings upon giving bonds for cost of suit. Obviously, the workman is in no position to give bonds or to bring suit, for he can afford neither the expense nor the loss of the job which such a procedure would entail.[1]

(5) *Deductions*

The problem of deductions from wages involves: (1) Deductions in respect to fines. (2) Deductions as payment for damages. (3) Deductions for use of material and tools. (4) Deductions for benefits.

Fines are imposed, presumably, for disciplinary reasons, and vary in application and amount in different establishments and with the caprice of the individual employer. They may not always be a real deterrent, but may on the other hand lead to carelessness, suggesting to the worker that he has paid for what he has done. They may be unfairly imposed, creating a sense of injustice and irritating the workers, and they may even prove to be a source of petty profits to the unscrupulous employer. At all events, they decrease the income of the wage-earner.

Deductions as payment for damages may be for bad or negligent work, injury to materials and to other property of the employer. Abuses are very general, for the employer determines the amount of damage done and puts the price on materials spoiled. It is humanly impossible to do perfect work, and no matter how good a worker may be at his trade, faults will occur at times. Such faults are part of the manufacturers' risk and should be dealt with as such. The employer is himself often to blame for setting an inexperienced hand to do work for which he is not competent.

The case of charges for materials and tools used by employees involves the same principle as in the previous case. This system is intended to secure economy in the use of material by making the worker responsible. From the point of view of the worker, however, the system is objectionable be-

[1] Respecting the variety of decisions on the constitutionality of this class of legislation, see Freund, *Police Power*, 1904, pp. 305-308; Clark, *Law of the Employment of Labor*, pp. 65-72; Stimson, *Handbook to the Labor Laws of the United States*, 1896, pp. 104-110.

cause of the possibility of overcharge, which no regulation, however strict, can altogether prevent.

Deductions for benefits received, such as medical attention, hospital care, and sickness insurance, are allowed by all states and countries, but some provide (as, for instance, New South Wales and Western Australia) that the deduction must not exceed the value of the thing supplied, and, when not stated, this is generally implied by all countries. Usually, also, these deductions from wages are in pursuance of a previous contract. About half a dozen states, including New York, New Jersey, and Ohio, specifically legislate against forced contributions for certain enumerated benefits as a condition of employment. Utah prohibits forced contributions for political campaign expenses.[1] Oregon is an example of a state which has legalized deductions for hospital benefits, but which requires that such deductions must be approved by the industrial accident commission.[2] A new development in the regulation of deductions for benefit funds is found in a type of law enacted first in Minnesota in 1919, which requires employers who make deductions from wages for the purpose of furnishing medical or hospital care, or accident, sickness, or old-age insurance, to secure a license for the benefit plan from the state insurance commissioner.[3]

A corporation may furnish insurance, lessening many hardships of life for the workingman and his family; but this insurance is enjoyed only as a result of continuous employment, which in turn often involves oppressive dependence. Especially is this true when after a number of years the workingman has acquired rights which may be lost by change of employment. Thus the burden may become great with increasing years, as new employment with insurance becomes more and more difficult to secure.[4]

Provisions are found in some laws, in connection with employers' liability, and sometimes confined to railroads, which regulate or prevent the payment of benefits to injured employees as a means of escaping from such liability. About half

[1] Utah, Compiled Laws, 1917, Sec. 2379.
[2] Oregon, Laws 1917, C. 393.
[3] Minnesota, Laws 1919, C. 388.
[4] Ely, *Property and Contracts in Their Relations to the Distribution of Wealth*, 1914, Vol. II, p. 714.

the states, the Philippine Islands, and the federal government have enacted that no contract of insurance or relief benefit shall constitute a bar to action by an employee for damages in case of injury or death.[1] Florida directly says that the existence of a relief department, by which the employer pays benefits to the workers, shall not relieve such employer from responsibility in case of death.[2] It is sometimes added, however, that the employer may set off against such a claim any sums he has contributed as benefit.[3] In Georgia the payment of wages up to $100 on the death of an employee is a sufficient release on the employer's part.[4]

In the Act of 1896[5] the first attempt was made in England to protect the worker from harsh and unreasonable fines. This act provided that there must be formal agreement for the fines; that the fine must be for something which causes, or is likely to cause, damage or loss to the employer or interruption or hindrance to his business; that it must be fair and reasonable, having regard to all the circumstances of the case; that written particulars must be given to the worker each time a fine is exacted; and, finally, that there shall be a register of fines open to inspection.[6]

In the United States there is a slightly increasing tendency in legislation dealing with deductions as fines—about eighteen states in all.[7] Massachusetts says fines shall not be levied except for imperfect work,[8] and Louisiana prohibits them ex-

[1] See, for instance, Ohio, Laws 1910, p. 195.
[2] Florida, Laws 1914, C. 6520.
[3] See, for instance, Wisconsin, Laws 1913, C. 644.
[4] Georgia, Code 1910, Secs. 3134-3136.
[5] 59 and 60 Vict., C. 44.
[6] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, Vol. I, p. 6.
[7] Arkansas, California, Connecticut, Hawaii, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, Nevada, Ohio, Oregon, South Carolina, Texas, and Wyoming.
[8] Massachusetts, Laws 1909, C 5140, Sec. 114. Under the terms of this act, fines for imperfect weaving may be levied only after the imperfections have been pointed out and the amount agreed upon by both parties. Apparently these provisions did not sufficiently protect the weavers, for in 1911 another act was passed stating that "No employer shall impose a fine upon an employee engaged at weaving for imperfections that may arise during the process of weaving" (Laws 1911, C. 584). The court, however, rendered the new law nugatory by its limited interpretation of the word "fine." (Commonwealth *v.* Lancaster Mills, 212 Mass. 315, 98 N. E. 864 (1912).)

cept when employees wilfully or negligently damage goods or property of the employer. Arkansas limits the rate of discount to 10 per cent of wages because of early payment. Connecticut, Mississippi, Nevada, New Jersey, and South Carolina prohibit discounting at all for early payment of wages. The California law prohibits a deduction from the wages of an employee, on account of the employee's coming late to work, a sum in excess of the proportionate wage which would have been earned during the time actually lost; provided, that for a loss of time less than thirty minutes, a half hour's wage may be deducted.[1]

The Australasian countries have no legislation on fines. In Austria, Belgium, Germany, and Holland fines are regulated in pursuance of a previous contract or published rules. In France fines cannot exceed one-fourth,[2] and in parts of Switzerland not more than one-half, of the daily wage.[3] In both these cases as well as in Holland the fines must go toward a workers' benefit fund.

A clause dealing with deductions, not levied for inferior work or for destruction of property, appears in Massachusetts,[4] where no deductions are to be made from the wages of women and minors when there is a stoppage of work owing to a breakdown of machinery, and the workers are not allowed to leave the mill. Foreign countries, while they sometimes limit the extent of deductions for materials used, still do not prohibit them. Although the labor codes generally state that prices shall not be excessive, this is a goal reached only by effective administration.

(6) *Mechanics' Liens and Wage Preference*

The idea that wages are to receive special treatment, that they are to be paid before other claims, that security is to be given for their payment, and that they shall be exempt up to a certain amount from execution, underlies legislation on mechanics' liens, on wages as preferred claims, and on wage ex-

[1] Session Laws 1921, C. 901.
[2] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, Vol. I, p. 95.
[3] *Bulletin of the International Labor Office*, Vol. III, 1908, p. 125.
[4] Massachusetts, Laws 1909, C. 514, Sec. 119.

emption. The last of these subjects is treated elsewhere;[1] here we consider the preferential treatment of the laborer as creditor.

Mechanics' lien laws represent a stage in the progress toward wage preference, but they should not be confused with it. They are founded on the still older practice of giving contractors and builders a claim for payment on houses they built and the land that these were built on.

In 1830 the first mechanics' lien law was passed by the New York legislature[2] and was based on the following considerations, set forth in a committee report:

"The committee are credibly informed that the severe and heavy losses sustained by the laboring interests have arisen far more frequently from insufficient, reckless contractors, having nothing to lose, than from contractees. . . . They would be distinctly understood, declaring it as their undivided opinion that a mortgage given to secure the payment of money lawfully borrowed, the justice of which no one will presume to dispute, is not a more equitable claim than that of the mechanic and laborer on the dwelling house and other buldings, and ground on which the same are erected, so far as their claim and demand can be correctly ascertained."[3]

Mechanics' lien legislation seeks to give the laborer a claim for the payment of what is due to him, backed by the security of the structure or land on which he has been employed. Contractors on public works are in most states required to give bond to secure the payment of wages. Mechanics' lien legislation exists in all the states, and extends to labor performed on public works, railroads, in mines, and on the land, as well as to lumbering, construction, and repair of vessels, sawmilling, and other occupations. Such liens are generally ranked as coming before other payments; and in many cases where contractors and subcontractors are entitled to benefit in a similar way, the wage-earner's claim is put first.[4] A type of law which is hardly designated a lien but intends to give security to the

[1] See "Wage Exemption," p. 47.
[2] New York, Laws 1830, C. 330.
[3] New York Assembly, *Documents*, 1830, No. 24.
[4] California, Colorado, Idaho, Illinois, Louisiana, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Washington, West Virginia.

payment of wages is that which makes stockholders in certain designated corporations liable for debts owed employees for labor. Indiana, Massachusetts, Michigan, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Tennessee, and Wisconsin have such laws, the law in the last-mentioned state applying to every corporation other than railroads.[1]

The next step was the provision that wages should be considered as preferred claims. All the states and the federal government have laws providing that in cases of assignments, administrations, and receiverships due to death or bankruptcy, the wages of servants and employees, up to a definite sum and for work done within a limited time, shall be paid next after fees, costs, and taxes.[2] France has a law giving preference to wage payments.[3] Great Britain and her colonies include in their bankruptcy laws preferential payment claims, providing usually that salaries of clerks not exceeding $500 and wages of laborers not exceeding $125 shall have equal claim to payment with taxes and expenses. The British bankruptcy law[4] now includes national insurance contributions and amounts due for workmen's compensation in this category. New Zealand has a *bona fide* contractors' and workmen's lien act resembling the American legislation.[5]

3. The Laborer as Tenant

(1) *Classes of Agricultural Workers*

Of the 33,000,000 males over ten years of age engaged in gainful occupations in 1920, more than one-fourth, or 9,869,030, were employed in agriculture. Of this number something less than 4,000,000 were owners operating their farms. More than 2,000,000 were tenants,[6] and 3,420,687 were laborers work-

[1] Wisconsin Statutes 1925, Sec. 182.23.

[2] Also, Alaska, District of Columbia, Hawaii, and the Philippine Islands.

[3] *Lois Décrets, Arrêtés concernant la Réglementation du Travail,* Bk. I, chap. II, Sec. II, Arts. 46, 47.

[4] 4 and 5 George 5, C. 59 (1914).

[5] New Zealand, Statutes 1892, No. 25.

[6] Fourteenth Census of the United States, Vol. V, 1920, p. 124. This figure is obtained by combining the estimates for agriculture and animal husbandry. The Census distinguishes the number of *farms* operated by owners and tenants, not the number of *owners and tenants;* hence these numbers are estimated.

ing for owners and tenants. These figures do not represent the actual proportions of wage-earners and employers in the sense of the wage bargain as understood in manufacturers and other industries. Of the 3,116,784 laborers, 1,273,477 were members of the family of the owner or tenant, and, therefore, their labor contracts do not exhibit the strictly business relation of employer and employee in the modern wage bargain. Such labor problems as they present, from the standpoint of legislation, are mainly those of child labor.

a. Hired Laborers. The remaining 1,843,307 are hired laborers, and to them would be applicable labor laws similar to those enacted to protect laborers in other industries. As a matter of fact, however, labor legislation in the United States has had very little to do with farm labor. Laws like those regarding workmen's compensation, safety, health, or hours of labor sometimes either specifically exclude agricultural labor from their operation or are not applicable. Other laws, such as laborers' liens, wage exemption, prohibition of involuntary servitude, and the like are so general or fundamental that they apply to farm labor.

Hired laborers are of two classes, considerably different in their condition. Casual laborers are usually hired by the day, while the great majority are hired by the month as far as these figures are concerned. Few casuals are included here as the 1920 Census was taken as of January instead of April as heretofore. This accounts in part for the decrease in the total number of hired farm laborers.

The number of 1,843,307 farm hands regularly employed is also understated, because an uncertain number of tenants are really hired laborers under a special form of tenant contract and should be classed as employees rather than tenants.

b. Tenants. The fourteenth Census for the first time classified tenancy from the central office. Enumerators took "yes" and "no" answers to specific questions. The classification was then made as follows:

Cash tenants	585,005
Share-cash tenants	127,822
Share tenants	1,678,812
Unspecified	63,165
Total	2,454,804

This was 38.1 per cent of the total number of farms in 1920. By cash tenant is meant not one who pays rent in actual cash, but one whose rent is definitely fixed and certain and is stipulated in advance in the contract either in dollars, in labor, or in products. It may be $7, ten bushels of wheat, or 100 pounds of cotton per acre. Evidently, the "cash" tenant is a small capitalist, a contractor, or an employer, since he invests his own money or labor and takes all of the risks of the business. His gains are profits rather than wages; his bargain with the landlord is a price bargain, not a wage bargain. Share-cash tenants are those who pay a share of the products for a part of the land and cash for a part.

The share tenants are more difficult to classify. They may be either small capitalists or simply farm laborers, and the Census does not distinguish between the two. A share tenant pays the landlord as rental a certain share of the product, as one-half, one-third, or one-quarter. In making such a contract, the tenant would appear to be a contractor or capitalist, who takes not indeed the whole risk of the business, but a part of the risk. Such is the case if he actually invests his own capital, such as horses, cattle, implements, and so on, and runs the risk of losing his capital on the chance of increasing it. He would figure the outcome as profit or loss.

c. "Croppers." If, on the other hand, the tenant "invests" nothing but his own labor, and the landlord furnishes all of the working capital, then the landlord is the capitalist-employer, the tenant is a laborer, and the bargain is a wage bargain. His wages, however, are not the stipulated daily or monthly wages received by a "hired man," but they are contingent wages, similar to those paid to a pieceworker, or, rather, to a sailor on a whaling ship, who receives a share of the product at the end of the voyage. This system of wage payment is spoken of as "product sharing," to distinguish it from "profit sharing."[1]

The terms "cropper" and "cropping contract" will be used herein to designate this kind of labor tenant under the system of share tenancy. The terms originated in the Southern states, where share contracts are most prevalent and where they account for the high percentage of tenancy. In 1920, share

[1] D. F. Schloss, *Methods of Industrial Remuneration*, 1891, p. 249.

tenancy in the South amounted to 76 per cent of the total tenancy, including both farmers and laborers on shares, while only 54 per cent of the Northern and 51 per cent of the Western farms were operated on a system of share-tenancy.[1] In popular usage, the term "cropper" includes both the share farmer, or small capitalist, and the share laborer. Both are croppers. The courts, however, have settled upon the term "cropper" to indicate the laborer,[2] and, adopting this usage, we can distinguish the cropper, as a laborer whose wages are measured by a share of the product under the guise of a lease, from the share tenant, as a small capitalist paying rent.

The 1920 Census adopted the definition of a cropper as a share tenant whose landlord furnished the animals, thereby eliminating much of the confusion and, for the first time, making it possible to get a fairly reliable estimate of the number of "croppers." The Census Monograph on Farm Tenancy reports 227,378 white croppers in the South and 333,713 colored. In other words, 35.3 per cent of the tenants were croppers.[3] No separation of "croppers" from other share tenants was made for the Northern and Western states.

In most of the states it has been left to the courts to decide in specific cases who were croppers and who were farmers. Indeed, the amount of capital owned by the farmer may be so small that he would be looked upon in other industries as scarcely more than a mechanic furnishing his tools and taking out work on a contract. The distinction is made in the laws of Alabama [4] which define a share tenant as one who owns his team, and the cropper as one whose landlord owns the team. The law of Texas, enacted in 1915,[5] is the first American law designed to regulate the rents of share tenants. It attempts to prevent the landlord from charging more than one-half of the value of the product if he furnishes everything except labor, and more than one-third of the grain and one-fourth of

[1] Fourteenth Census of the United States, Vol. VI, Pt. II, p. 86.

[2] Steel *v.* Frick, 56 Pa. St. 172 (1867); Harrison *v.* Ricks, 71 N. C. 7 (1874); Almand *v.* Scott, 80 Ga. 95, 4 S. E. 892 (1888); Hammock *v.* Creekmore, 48 Ark. 264, 3 S. W. 180 (1886).

[3] *Farm Tenancy in the United States,* 1920 Census Monograph IV, Washington, 1924, p. 123.

[4] Alabama, Code 1907, Secs. 4742, 4743.

[5] Texas, Laws 1915, Art. 5475 (3225).

the cotton if the tenant furnishes all of the operating capital. Thus it distinguishes and regulates both the rent of the farmer and the wages of the cropper.

In other states, where the legislature has not attempted to standardize or regulate the share contracts, the courts have been compelled to decide in each case as it arises whether the laborer is a cropper working for wages under a labor contract, or a tenant-farmer paying rent under a lease. If he is a cropper, then, in case of dispute, he would be awarded what similar laborers in the locality receive as wages, regardless of the value of the crop. If he is a tenant farmer he is awarded his share of the crop, regardless of what he might earn as wages.

In order to decide the point, the courts look into the contract to discover which party has the control and direction of the farming operations and the legal possession of the crop at the end of the season. In brief, if the landlord gives orders as to cultivation, and has legal possession and the right to divide the crop and give the tenant his share, the contract is a labor contract.[1] If the tenant is "his own boss" and has legal possession of the crop, and gives the landlord his share, the contract is a lease.[2] In Oklahoma, it was held that a "cropper" is a hired hand paid for labor with a share of the crop he works to make and harvest, and has no exclusive right and no estate in the land until the landowner assigns him a share, but a "tenant" has exclusive right to possession of lands he cultivates and an estate therein for the term of his contract and right of property in the crop.[3] Generally, it turns out that, in proportion as the tenant advances a larger and larger share of the working capital, the contract which he is able to make is a lease and gives him not only a larger share of the product, but also a chance to make a profit in addition to wages; while the smaller the proportion of capital which he advances, the lesser

[1] Shoemaker *v.* Crawford, 82 Mo. App. 487 (1900); Kelly *v.* Rummerfield, 117 Wis. 620, 94 N. W. 649 (1903); Bowman *v.* Bradley, 151 Pa. St. 351, 24 Atl. 1062 (1892); Chase *v.* McDonnell, 24 Ill. 237 (1860); Cutting *v.* Cox, 19 Vt. 517 (1847).

[2] Taylor *v.* Bradley, 39 N. Y. 129 (1868); Neal *v.* Brandon, 70 Ark. 79, 66 S. W. 200 (1902); Almand *v.* Scott, 80 Ga. 95, 4 S. E. 892 (1888).

[3] Halsell *v.* First National Bank, 109 Okla., 220, 235 Pac. 532 (1925).

is his share and the more nearly the contract becomes a labor contract.

If the contract is a lease, the landlord has a preference lien on the crop for his rent.[1] If it is a labor contract, the laborer has a laborer's lien on it for his wages.[2]

(2) *Agricultural Labor Legislation*

The foregoing distinctions indicate differences in the kind of legislation needed to protect agricultural labor compared with that protecting industrial labor. The one modifies mainly the law of landlord and tenant, the other that of employer and employee. Farming is, for the most part, a small-scale industry, and there is opportunity for individuals to rise into the position of independent owners. Beginning, perhaps, as a casual laborer, the next step is that of the farm laborer hired by the month or by the year, and living with the family of the owner. Next, with a family of his own, the steps upward are cropper, share tenant, cash tenant, owner with mortgage, and, finally, ownership unencumbered. Legislation may aid or obstruct this upward movement.

If the share tenant, whether cropper or farmer, is not permitted to acquire any title to such permanent improvements as he adds to the land, his condition is practically the same as that of the wage-earner, who has no title to his own product. Like the laborer, he tends to be kept permanently in that class. This is the condition of croppers and share tenants in the United States, and the result is seen in their frequent movement from farm to farm. Such tenants, without title to their "savings" in the form of improvements, can do but little in the way of accumulating the capital necessary to rise to the higher steps, and their instability and lack of incentive are equally serious factors in their own deterioration and in that of the soil.

This condition received legislative attention first in England. There had been a strong agitation favoring the enactment of legislative measures to compensate tenants for improvements made on the landlord's estate, but not until 1850 was a bill

[1] Randall *v.* Ditch, 123 Ia. 582, 99 N. W. 190 (1904); Hopper *v.* Haines, 71 Md. 64, 18 Atl. 29, 20 Atl. 159 (1889); Keoleg *v.* Phelps, 80 Mich. 466, 45 N. W. 350 (1890); Wilson *v.* Stewart, 69 Ala. 302 (1881); Noe *v.* Layton, 69 Ark. 551, 64 S. W. 880 (1910).

[2] Grisson *v.* Pickett, 98 N. C. 54, 3 S. E. 921 (1887).

introduced into Parliament favoring a reasonable allowance for such improvements. The bill did not pass, but similar measures were brought before that body several times, and in 1875 an act was obtained stipulating the conditions under which an outgoing tenant was to be paid for improvements. No provision was made, however, compelling landlords to contract under the law, and as a consequence the statute was ineffective.

In 1883, a new bill, known as the Agricultural Holdings Act, was passed, compelling all landlords to make their leases with tenants subject to compensation for improvements.

Even with compensation for improvements, it requires time and trials for the tenant or purchaser to find a suitable farm. Finding the tenant a farm has a direct relationship with finding the laborer his job.[1] The importance of this problem is keenly felt, as is shown in an investigation made by the United States Department of Agriculture.[2] In accordance with a statute enacted in 1905, New York State[3] established a bureau of information regarding farms for rent and sale and positions for agricultural laborers. It was claimed that this bureau had secured work for about 15,000 men on farms during the first three and a half years of its existence.[4] The bureau also issues a bulletin dealing with the farms to be disposed of throughout the state.

Legislation of various countries also provides credit agencies to enable the tenant or farmer to acquire advances of capital necessary to secure permanency in his position. The Schultze Delitsch and Raiffeisen banks in Germany and Austria, the Crédit Foncier in France, the cooperative banks in Italy and Russia, are private cooperative credit systems operating under government supervision.[5] New Zealand, Australia, Ireland, and the provinces of Nova Scotia and New Brunswick in Canada make loans to farmers, as do also Idaho, Indiana, Iowa,

[1] See "Public Employment Exchanges," pp. 319-337.

[2] United States Department of Agriculture, *Statistics Bulletin No. 94*, 1912, "Supply of Farm Labor," George K. Holmes.

[3] New York, Laws 1905, C. 243.

[4] New York State Commissioner of Agriculture, *Seventeenth Annual Report*, 1910, p. 164.

[5] American Commission on Agricultural Cooperation and Rural Credit in Europe, *Report*, Pt. I, 1913, pp. 24, 181, 182, 237, 437, 438, Sixty-third Congress, First Session, Senate Document No. 214.

North Dakota, Oklahoma, Oregon, South Dakota, and Utah.[1] Congress in 1916 passed a rural credit law, providing for the formation of a cooperative rural credit system on a national scale. In March, 1923, additional credit facilities were provided known as the Agricultural Credits Act which was amended by an act of March 4, 1925.[2]

In New Zealand the "advances to settlers" system is administered by the New Zealand State-guaranteed Advances Office. Loans are repaid to the advances office in semiannual instalments of principal and interest. Interest is charged at the rate of 5 per cent a year, but this rate is reduced to 4½ per cent if payments of interest and principal are promptly made.[3]

Since the war, the Central European States have attempted to break up the large landholdings either by voluntary sale or expropriation, and to pass the land on in smaller tracts to cooperative societies of farmers, small land-owners whose holdings were too small for family independence and to the landless for homestead dwellings. In this last class were industrial workers, employees in the public service, ex-service men, workers on the expropriated estates, and the disabled who were not capable of full-time work. Credit facilities have been extended and other steps taken to assist the new owners in holding their land.[4]

In regulating the contract of landlord and tenant, the problem of administration is similar to that of regulating the contract of employer and employee. At first the matter is left to the courts as is the case with the Alabama and Texas laws and the British legislation above mentioned. Afterward it is found that the tenant, like the wage-earner, is unable to avail himself of the aid of the courts. Then, an administrative body or commission is created to deal with each contract as it arises. In the case of the tenant contract, it is the highly inflated value of land that offers the chief obstacle to the laborer or cropper in

[1] Wisconsin State Board of Public Affairs, *Bulletin on State Loans to Farmers*, 1913, p. 4.

[2] 42 United States Statutes at Large, 1923-1925 C. 252; 43 Statutes at Large, C. 524, p. 1262.

[3] Wisconsin State Board of Public Affairs, *Bulletin on State Loans to Farmers*, 1913, p. 14 ff.

[4] "New Agrarian Legislation in Central Europe," *International Labor Review*, Vol. VI, No. 3, September, 1922, p. 344.

advancing to the position of owner. This obstacle was attacked in Ireland, in 1881, by the creation of a land commission to fix rents. The commission reduced rents 15 to 20 per cent. Later, when the government began to make loans at low rates of interest, in order to encourage farm ownership, and then began to compel the landlords to sell to their tenants, the land commission fixed the fair value of the land. Otherwise, the government loans, at 3 per cent interest, would have served only to inflate land values further, and the landlord would have absorbed the benefit intended for the tenant. Thus the Irish Land Commission does for landlord and tenant what a public utility commission does for corporation and consumer, or a minimum wage commission for employer and employee.[1]

4. The Laborer as Competitor

From one point of view all labor legislation has as its object the protection of the laborer as a competitor. The wage-bargaining power of men is weakened by the competition of women and children, hence a law restricting the hours of women and children may also be looked upon as a law to protect men in their bargaining power. The same is true in a different way of industrial education and free schools, for they tend to reduce the competition for the poorly paid jobs by increasing the efficiency and wage-earning power of laborers who otherwise would be serious competitors. But for these classes of legislation the protection of the laborer as a competitor is not the main object. There are two classes of legislation, however, of which it may be said that the main purpose has been to protect the American workman from competition of poorly paid laborers: (1) Legislation on immigration, especially the laws against induced immigration and the Chinese exclusion laws. (2) Legislation as to the sale of goods manufactured by convicts.

(1) *Protection against Immigrants*

Immigration legislation tends more and more to develop along protective lines. At first a country encourages people to

[1] See Irish Land Acts of 1881, 1885, 1903, and 1909 in the English statutes; Cant-Wall, *Ireland under the Land Acts;* American Commission on Agricultural Cooperation and Rural Credit, *Report,* 1913, p. 865, Sixty-third Congress, First Session, Senate Document No. 214.

come, in order to develop its resources; later means have to be found to safeguard the interests of the existing population.

There are four protective purposes which are served by immigration legislation. The first is the social protection of the community generally. It is obvious that every state will regard certain classes as objectionable; hence the prohibitions that the United States puts on the landing of prostitutes (since 1875), criminals (1875), professional beggars (1903). Polygamists (1891) and anarchists (1903) are excluded, partly on social and partly on political grounds. By the Act of 1918, power was given to expel and exclude aliens who were anarchists, who taught opposition to all organized government, the overthrow of government by force, etc., who wrote, published, or gave pecuniary assistance to any organization furthering these aims.[1] The exclusion of Orientals (1882), again, may be justified on the principle that they are unlikely to live successfully together with the other races in America. Since political offenders are on a different level from ordinary offenders against the law, they have always been exempt from such exclusion (1875).

A second kind of protection, that of the national health, is afforded by the laws which attempt to keep out those immigrants suffering from contagious disease (1891), especially from tuberculosis (1907).

A third type of excluded class is made up of those persons who are looked upon as constituting a danger to the taxpaying classes. Legislation designed to keep out persons likely to become a public charge (1882) aims at protecting the taxpayer from having to support such individuals. The fear that lunatics, idiots, or epileptics may also become charges on the community is chiefly accountable for the prohibition (1891) against their coming into the country. Again, the repeated efforts which were made to introduce a literacy test, culminating in success, over the President's veto, in 1917, may have been inspired partly by a feeling that the illiterate are more likely to become destitute than others. A head tax, generally used for revenue alone, may at times become a sort of property qualification. In the United States it was at first 50 cents (1882) and has been gradually raised to $8 (1917), which is not

[1] 41 United States Statutes at Large, C. 251, p. 1008.

exactly a prohibitive figure; but in Canada, it is fixed at $500 for Chinese who do not belong to one of several enumerated professional classes.[1] Finally, persons traveling on assisted passages who cannot prove that they do not belong to any of the excluded classes are not allowed to land (1891); after being dependent on others such persons might easily come to be dependent on the state.

The fourth kind of protection put forth by the law over the people of this country is, from the standpoint of labor legislation, the most important. The contrast between the protection afforded to American goods in the commodity market and the lack of any such effort to lessen the competition of labor in the labor market was early noticed, and efforts have been made since 1868 to control immigration after the example of the tariff. In that year the Act of 1864 encouraging immigration was repealed[2] and a start was given to a new, negative policy with regard to immigration. This new policy had particular reference to what is commonly but inaccurately called "contract labor," or induced immigration. The Percentum Act of May 19, 1921, went further than merely refusing to induce immigration and positively limited the number of aliens admissible in each year. This was necessary to ward off the post-war influx of aliens during a period of business depression and unemployment. The 1921 act expired by limit on June 30, 1922, but by Act of May 11, 1922,[3] it was extended to June 30, 1924. In this year a new law was enacted changing the percentage and the base. This will be discussed later.[4]

a. Induced Immigration. The eighteenth century type of immigration had been very largely due to inducement, sometimes, indeed, to compulsion. After the first quarter of the nineteenth century indentured labor[5] had practically ceased to exist; but in 1864 a stimulus was given (owing to the war-time scarcity of labor) to a similar system of bringing numbers of

[1] Immigration Commission, *Reports,* 1911, Vol. XL, p. 62.
[2] United States, Laws 1868, C. 38, Sec. 4.
[3] "An act to Limit the Immigration of Aliens into the United States," approved May 19, 1921, and amended May 11, 1922. 42 United States Statutes at Large, May 19, 1921, C. 8, p. 5. C. 187, 42 United States Statutes at Large, 540 (Sixty-seventh Congress, Second Session).
[4] 43 United States Statutes at Large, 1923-1925. C. 190, p. 153.
[5] See "Indentured Service," p. 40.

Europeans here to work under contract, by a law [1] which provided that such contracts should be valid and enforceable in the United States courts. This, it must be remembered, was before the passage of the thirteenth amendment. Employers took advantage of the law in order to bring over foreign laborers. Companies were formed for the same purpose; and the American labor market was threatened with a huge oversupply of cheap foreign labor. In spite of agitation in Congress and feeling in the country, it was not until 1868 that this act was repealed, nor until 1885 that the inducement of immigration was formally forbidden by law.

The Contract Labor Law of 1885 [2] forbade the assistance or encouragement of immigrants coming here under contract to work. The act applied solely to laborers, for those professions which send representatives abroad were expressly exempted, as were also domestic servants and skilled workmen in new industries, provided labor of the same kind could not be obtained otherwise. Individuals were allowed to assist friends and relatives to come to America. This successful reversal of policy from the act of 1864 was due in a large measure to the efforts of the Knights of Labor and the trade unions. It answered the demand of the working class as a whole, and especially that part of it which was organized, for effective protection against the competition of the masses of immigrants who were now entering the country. The number of immigrants, which had decreased during the 'seventies, rose to 457,257 in 1880, 669,431 in 1881, and 788,992 in 1882.[3] Another immigration act was passed in 1891, which had as one of its objects the prevention of induced immigration.[4] The government was beginning to make it more difficult for a man who had previously obtained work to come into the United States. Transportation companies were now forbidden to solicit or encourage immigration, and the practice of issuing advertisements in foreign countries promising employment here was prohibited. At the same time the efforts of Congress to make the Contract Labor Law a real deterrent were met by a silent opposition from the courts,

[1] United States, Laws 1864, C. 246.
[2] United States, Laws 1885, C. 164.
[3] Immigration Commission, *Reports,* Vol. III, 1911, p. 4.
[4] United States, Laws 1891, C. 551.

which continued to construe the law strictly and to treat it as of limited application until 1907, when the terms of the law itself were changed.

But during the 'eighties and 'nineties the change from the "old immigration" to the "new immigration" was taking place; that is, the great bulk of the people no longer came from Germany, the United Kingdom, and Scandinavia, but from Southern Italy, Austria-Hungary, Russia, and latterly Greece. These people had, in general, a lower standard of life than the Americans and the earlier immigrants. While it is true that in many cases where they replaced native labor this adjustment was favorable to the Americans, in that these were raised thereby to more responsible and better paid positions, or else went farther West or Southwest, as did the coal miners, attracted by better wages, still it cannot be denied that the newer immigrants were as a rule willing to work for less wages, to endure harder conditions, and to lower the general plane of living of unskilled laborers. It is on account of this displacement of American labor by immigrant labor, a phenomenon which has been at times emphasized to the point of exaggeration, that the working class has so eagerly desired the restriction of immigration;[1] and the contract labor laws were the first attempt to do this. It was not necessary to enforce the law against farm laborers, because from them no such competition was feared.

A later revision of the Contract Labor Law was made in the General Immigration Act of 1917.[2] This time the scope of the words "contract laborer" was enlarged to include any one "induced, assisted, encouraged, or solicited" to immigrate by any kind of promise or agreement, express or implied, true or false, to find employment. The Immigration Commission of 1911 said of even the less sweeping law of 1907 that "it is difficult to conceive how the letter of the law respecting the importation of contract laborers could be more stringent than at present"; and in consequence of this trend in the law the courts have been obliged to give up their attitude of considering as prohibited by

[1] For a discussion of the economic effects of immigration from opposite points of view, see J. W. Jenks and W. J. Lauck, *The Immigration Problem*, and I. A. Hourwich, *Immigration and Labor*.

[2] United States, Laws 1916-1917, C. 29.

the law only those transactions in which a contract could be proved.

The cases on the subject bring out the increasing strictness of the law. In United States *v.* Edgar,[1] decided under the law of 1885, the prosecution of an employer who had imported labor from abroad failed, because no contract could be proved. In United States *v.* Gay [2] it was held that the law of 1891 was intended to exclude only unskilled manual laborers. After the act of 1907, as already pointed out, these doctrines could no longer be held, and in 1914 we had a case in which a fine of $1,000 was exacted for each of forty-five contract laborers brought across the Mexican border for the purpose of helping to construct a railway.[3]

That laws against induced immigration, although in force for thirty-five years, have done very little to protect the American laboring man from the competition of immigrants is evident from two facts: the enormous numbers of unskilled laborers who have since entered the United States, and the efforts that were constantly being made to secure other means, notably a literacy test, for creating a "labor protective tariff." [4] With regard to the first point, it may be mentioned that during the fiscal year ending June 30, 1914, the latest before the war, the number of "laborers" who entered the United States was 226,407, and the number of skilled workmen was 173,208.[5]

The need for protection was answered more fully by the 1921 Quota Act than by any previous one. The total immigrants to be admitted in any fiscal year was limited to 3 per cent of the number of persons of such nationality who were resident in the United States according to the Census of 1910. This act was supplemental to, and not a substitution for, other

[1] United States *v.* Edgar, 1 C. C. A. 49, 48 Fed. 91 (1891).
[2] United States *v.* Gay, 37 C. C. A. 46, 95 Fed. 226 (1899).
[3] Grant Bros. Construction Co. *v.* U. S., 232 U. S. 647, 34 Sup. Ct. 452 (1914).
[4] In the effort to secure the desired protection by another method, the people of Arizona in 1914 enacted by initiative and referendum a law requiring employers of more than five persons to engage at least 80 per cent qualified electors or citizens. This statute was declared unconstitutional by the United States Supreme Court as denying the equal protection of the laws. Truax *v.* Raich, 239 U. S. 33, 36 Sup. Ct. 7 (1915).
[5] Commissioner General of Immigration, *Report*, 1914, pp. 40, 41.

immigration laws. It did not apply to countries regulated in accordance with treaties or agreement relating solely to immigration, *i.e.*, China and Japan. Preferences within the quota were to be given to wives and certain near relatives of citizens of the United States. This act was extended at its expiration in 1924.

The act of 1924 had two purposes—one to limit the total influx, and the other to select the type of immigrant which most easily fitted into American institutions and whose standard of living was not below that of the American worker. The act provided a limit of 2 per cent of the number of persons of such nationality resident in 1890. The "new" immigration commenced after 1890 so that by taking that year as a base a greater proportion of North European immigrants were admissible. This is seen by a comparison of certain of the quotas of 1921 and 1924.

	1921	*1924*
Italy	42,057	3,845
Poland	30,977	5,982
Germany	67,607	51,227
Great Britain and North Ireland	77,342	34,007

No more than 10 per cent may be admitted in any month except where the quota is less than 300 for the entire year. The provisions were extended to the entire world except Canada, New Foundland, Mexico, Cuba, Haiti, Dominican Republic, Canal Zone, or independent country of South America.

After July 1, 1927, the quota is to be determined by the number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin bears to the number of inhabitants in continental United States in 1920. The minimum is 100.

The effect of the present law is that it now allows between 160,000 and 170,000 new alien immigrants from Europe to come in annually. Certain relatives and other exempted classes are also admitted outside of the quota. During the year 1925, it reduced the net quantity of legally admissible new arrivals to about 230,000, substantially one-third of what it was under

the preceding law. About three-fifths of our immigration is now from the Western Hemisphere, chiefly from Canada and Mexico. With respect to European immigration, distribution among the various nationalities is now fairly in accordance with the racial composition of our present population. Instead of about 80 per cent from Southeastern Europe, nearly 80 per cent now come from Northern and Western Europe.[1]

Immigrants are now divided into quota and non-quota. Those in the latter group are: (1) Wives and unmarried children under eighteen years of age of a citizen of the United States. (2) Lawfully admitted aliens temporarily abroad. (3) Immigrants from excepted countries and wives and children under eighteen. (4) Certain of the professional classes. (5) Students. Quota immigrants are those not included under the non-quota groups.

Preferences within the quota are given to unmarried children under twenty-one, father, mother, husband, or wife of a citizen of the United States, and to immigrants skilled in agriculture. These preferred groups, however, may not exceed 50 per cent of the quota.

A very practical provision was embodied in the law of 1924. Every immigrant must now secure a visa from the American Consul in the country of departure. The consul cannot issue a visa if from any of the statements it appears that the alien is inadmissible or if the quota for that country has already been filled. This provision prevents the rush of aliens at the beginning of each month and at the end of the year; and does away with the discomforts due to excessive congestion at Ellis Island. Furthermore, the number of rejections of aliens inadmissible under our laws has been decreasing as the consuls have learned their duties and have been more careful about granting visas. Only 25,390 were rejected at the port of entry in 1925, the greater part, 15,989 for not having proper land visa.[2]

Section 13 of the law provides that "no alien ineligible to citizenship shall be admitted to the United States." This is important when it is recalled that the naturalization laws state

[1] *Annual Report of the Executive Committee* for 1925 of the Immigration Restriction League, Boston.

[2] Commissioner General of Immigration, *Report*, 1925.

that the provisions thereof "shall apply to aliens being free white persons and to aliens of African nationality and to persons of African descent." This means persons other than Caucasian, or white race, and African, or black race, are ineligible to citizenship through naturalization and therefore not eligible as immigrants. This excludes Chinese, Japanese, East Indians, and other people indigenous to Asiatic countries and the adjacent Islands. These new provisions may in time become a substitution for the other exclusion acts as to these classes.

In Australia a law[1] similar to the American law, but less rigid, excludes persons seeking to enter the country on a contract of employment. The minister for external affairs may, however, admit such an immigrant (a) if the contract is not made in contemplation of affecting an industrial dispute; (b) if the remuneration and other conditions of employment are as advantageous as those current for workers of the same class at the place where the contract is to be performed. A further clause, which applies only to persons not British subjects or their descendants, and therefore to very few emigrants to Australia, provides that there must be difficulty in the employer's obtaining within the Commonwealth a worker of equal skill and efficiency. The states belonging to the Commonwealth offer assisted passages to agricultural workers and to domestic servants, whose ranks are by no means overcrowded.[2]

In the Union of South Africa, the government endeavors to maintain good conditions in the labor market by preventing unemployment and directly assuring itself that the competition of every immigrant is "fair." Every immigrant of European descent belonging to the working class is obliged to have a certificate, stating that he has been engaged to serve, immediately upon his arrival, an employer of repute at adequate wages, for a period of time to be fixed in said conditions, but not to be less than one year.[3] The terms of this law are exactly the opposite of the American provisions against induced labor; yet the idea of protecting the laborer from competition with an immigrant of lower standards is common to both.

b. Exclusion of Orientals. The danger to the laborer from

[1] Act No. 19 of 1905.
[2] Commonwealth of Australia, *Official Yearbook*, 1914, p. 1027.
[3] South Africa, Laws 1913, No. 22 (immigrants' regulation act).

the competition of European immigrants may be lessened and gradually done away with as these become Americanized. Trade-unionism, especially, is a force which is giving the immigrant the same standards as the American. In the case of the Oriental races, however, this "happy ending" to the story is not to be expected. Individual Chinese, Japanese, and Hindus may settle down to lead Western lives and adopt Western ideas; but the great mass of their countrymen who emigrate do so without any desire to change their ways of living. It is a well-known fact that these ways are much more economical than those of an American or European, and that therefore an Oriental can accept wages which to a white man would mean starvation. No doubt race feeling enters to some extent into the composition of laws excluding Chinese, Japanese, and Hindus; but more deep lying is the fear of the competitive worker. This is shown by the fact that the employing classes welcome Orientals, whom they find efficient, polite, and contented. Miss Eaves says of the early Californian opposition to the Chinese:

> "The legislation on Oriental labor sprang from the people. . . . The laws . . . were the product of the actual experiences—sometimes of the race prejudices—of those in the humblest ranks of society. For thirty years the working people persistently made known their needs, winning at last a practically unanimous support in the state, so that all classes united to urge the tardy federal legislation for exclusion."[1]

The report of the federal Joint Special Committee to Investigate Chinese Immigration, which was published in 1877, is filled with complaints against the Chinese on the part of American workingmen who asserted that they could not compete with Chinese. A point very often made was that the average American workman is a married man with a family, while Chinamen would come to California alone and expect to earn only what would keep a single man. Others said that Chinese labor was less efficient than white labor.[2] One witness asserted that he used to earn from $20 to $21 a week at

[1] Lucile Eaves, *History of California Labor Legislation,* 1910, p. 115.

[2] Joint Special Committee to Investigate Chinese Immigration, *Report,* pp. 346, 347, Forty-fourth Congress, Second Session, Senate Report No. 689, 1877.

broom-making, but that in competition with the Chinese he could make only $14.89.[1]

It was this agitation by the people on the Pacific coast, who had learned to fear the industrial competition of the Chinese, that led to federal legislation and finally to the exclusion of the Chinese laborers. The Burlingame Treaty of 1868 had settled nothing, for it merely proclaimed the right of the Chinese to settle where they would, while denying them the right of naturalization.[2] Another treaty, concluded in 1880, gave the American government the right "to regulate, limit, or suspend" Chinese immigration, but not absolutely to prohibit it. Two years later the exclusion of Chinese laborers went into effect, when an act was passed forbidding them to enter the country for the next ten years.[3] This policy has been kept up ever since in laws and treaties which have gradually grown more strict. On the same principle Japanese laborers who are not coming to the United States in order "to resume a formerly acquired domicile, to join a parent, wife, or children residing there, or to assume active control of an already possessed interest in a farming enterprise in this country," are refused passports by the Japanese government, in accordance with a treaty agreement of 1907.[4]

The British self-governing colonies have had a similar experience to that of the United States, and have met it by practically the same means. Canada excludes the Chinese laborers by making them pay a head tax of $500; the Japanese, by an agreement with the government of that country, that not more than 400 Japanese are to enter Canada annually; and the Hindus, by a head tax of $200 and the requirement that they shall come by a "continuous journey" from India, which cannot be done by the existing routes.[5] Australia and New Zealand use a literacy test to keep out Chinese, who must write fifty words (Australia) or a signed application for admission to (New Zealand) in a European language.[6]

c. The Literacy Test. The British self-governing colonies

[1] *Ibid.*, p. 360.
[2] Immigration Commission, *Reports*, Vol. XXXIX, 1911, p. 69.
[3] United States, Laws 1882, C. 126.
[4] United States, Laws 1907, C. 1134.
[5] Immigration Commission, *Reports*, Vol. XL, p. 75.
[6] *Ibid., Abstracts of Reports*, Vol. II, pp. 633, 637.

have found in the literacy test a weapon against Asiatic immigration. In this country a long struggle was made to apply to all immigrants a test of this kind, succeeding in 1917 over the Presidential veto which had three times defeated earlier Congressional action in this direction.

First introduced unsuccessfully in Congress in 1892, the principle of the literacy test was embodied in a bill of 1895 and survived through numerous modifications until two years later it had passed the House and Senate.[1] The intention of the bill was to keep out not only the criminal and pauper classes, but also the Southern and Eastern Europeans, very many of whom were illiterate. President Cleveland, however, vetoed it as being un-American and illiberal, and also as unlikely to have any good effect on the prevailing depression or on violence in labor troubles and racial degeneration. The House passed the bill over the President's veto by a majority of 193 to 37, but no action was taken in the Senate and the bill was consequently not enacted into law.

The next attempt to secure a literacy test was made under the Taft administration. A bill was introduced into the Senate in 1911, containing a clause which was practically copied from the bill mentioned before.[2] It was passed by the House and Senate, but President Taft vetoed it, February 14, 1913. The Senate thereupon passed the bill again, but in the House the vote fell short of the required two-thirds majority and the bill therefore had to drop.[3]

Another bill including a literacy test of the usual type was introduced in the House in 1913.[4] The House and Senate voted favorably on this bill and it went to President Wilson on January 16, 1915. He returned the bill with his veto, giving, as his reason, that this bill embodied a radical departure from the traditional policy of the country, in almost entirely removing the right of political asylum and in excluding those who have missed the opportunity of education, without regard to their character or capacity. He did not believe, moreover, that the bill represented the will of the people, and for these rea-

[1] *Ibid., Reports,* Vol. XXXIX, p. 47.
[2] *Congressional Record,* Vol. XLVII, 1911, p. 3669.
[3] *Ibid.,* Vol. XLIX, 1913, p. 3429.
[4] *Ibid.,* Vol. L, 1913, p. 2013.

sons he refused to sign it.[1] The House again could not raise a two-thirds majority in favor of the bill, and so, like its predecessors it came to nothing.[2]

Finally in 1916 an immigration measure containing the literacy test was again introduced and passed by Congress. It was again vetoed by President Wilson,[3] but this time the necessary two-thirds majority was secured in both Houses to adopt it over his veto, and it became a law on February 5, 1917.[4] Persons physically capable of reading, and over sixteen years of age, are excluded if they cannot read some language, except near relatives of admissible aliens and those seeking entrance to escape religious persecution. During the first fiscal year after its going into effect, the reading test served to exclude 1,598 immigrants.[5] However, the sharp drop of immigration due to the war—110,618 entering in the year ending June 30 1918, as compared with 1,403,081 in the year ending June 30, 1914—indicates that the exclusion of newcomers will be a much less pressing question for a number of years. In November, 1919, the first official International Labor Conference called under the League of Nations, in session at Washington, adopted as part of its proposed program on unemployment the recommendation that "recruiting of bodies of workers in one country with a view to their employment in another country should be permitted only by mutual agreement between the countries concerned and after consultation with employers and workers in each country in the industries concerned."[6]

(2) *Protection Against Convict Labor*

The best estimate of the number of convicts engaged in productive industry was made by the United States Department of Labor in its study in 1923.[7] There were 84,761 convicts

[1] Sixty-third Congress, Third Session, H. R. Document No. 1527.
[2] *Congressional Record*, Vol. LII, 1915, p. 3078.
[3] Sixty-fourth Congress, Second Session, H. R. Document No. 2003.
[4] United States, Laws 1916-1917, C. 29.
[5] Commissioner General of Immigration, *Report*, 1918, p. 23.
[6] *American Labor Legislation Review*, Vol. IX, No. 4, December, 1919, pp. 533-534.
[7] United States Department of Labor, *Bulletin No. 372*, "Convict Labor," 1923.

in the 104 state and federal prisons studied; 51,799, or 61 per cent, were employed at productive labor as follows:[1]

Convicts	*Value*
6,083, or 12 per cent, were working under the contract system and produced goods with a wholesale market value of	$18,249,350
3,577, or 7 per cent, under piece-price system	12,340,986
13,526, or 26 per cent, under public-account system	16,421,878
18,850, or 36 per cent, under state-use system	13,753,201
9,763, or 19 per cent, under public-works-and-ways system	15,331,545
Total	$76,096,960

Sixty-two per cent ($47,012,214) of the goods were destined for direct competition on the open market, forty-two

[1] Six systems of employment are generally recognized, as follows:

The lease system.—Under this system the contractors assume practically the entire control of the convicts, including their maintenance and discipline, subject, however, to the regulations fixed by statute. In general, the prisoners are removed from the prisons and are employed in outdoor labor, such as mining, agriculture, railroad construction, etc., though manufacturing is sometimes carried on. The nature and duration of the employment are, within the restrictions of the law, fixed by the lease. (The Lease system was not reported in effect in any of these institutions.)

The contract system.—The employment under this system is usually within the prison shops or yards, discipline and control remaining in the hands of the officers, only the labor of the convicts being let to, and directed by, the contractors for manufacturing purposes. The state usually furnishes shop room, and sometimes also provides power and machinery.

The piece-price system.—Not only the discipline of the convicts, but the direction of their labor as well, is retained by the state under this system, the contractors furnishing the material to be made up and receiving the finished product, an agreed price per piece being paid for the labor bestowed.

The public-account system.—There is no intervention of outside parties under this system, the employment of the convicts being in all respects directed by the state, and the products of their labor being sold for its benefit.

The state-use system.—This system is similar to the above, except that such articles are produced as will be of service to the state in supplying and maintaining its various institutions, and are appropriated to such use instead of being put on the general market.

The public-works-and-ways system.—Under this system convicts are employed in the construction and repair of public buildings, streets, highways, and other public works.

per cent were sold within the state of origin, and fifty-eight per cent without. The industries mainly affected by this competition are:

Shirts	$12,340,230	Children's play suits	1,149,030
Binder twine and rope	5,585,036	Hosiery	1,063,519
Shoes	4,961,470	Bungalow aprons	854,970
Coal	3,860,616	Buildings (under public-works-and-ways system)	3,503,831
Pants	3,344,206		
Farm and garden products	2,312,332	Roads (under same system)	11,827,714
Overalls	1,820,032		
Brooms	1,820,032		
Reed chairs	1,412,466		

Of the institutions studied, thirty-one paid a wage of 10 cents per day or less, eight paid 10 to 20 cents, eleven paid 20 cents, and one paid as high as $1.50. In some cases pay was given for overtime work.

The problem raised by permitting convicts' work to be sold in the open market in competition with the product of free labor has been expressed as follows:

"The two investigations (of the Bureau of Labor, 1885 and 1895) showed that the convict product as a whole was very small when compared with the entire product of free labor in the United States. But the employers of free labor and their workmen unite in affirming that when any convict-made product is placed in competition with the product of free labor the market becomes demoralized, even a small sale affecting prices far out of proportion to the amount of the sale. . . . Every state objects to being made the market for convict-made goods produced in other states."[1]

The prisons do not stand in the normal relation of producers to the commodity market; they go on working, regardless of the fluctuations of business; they can undersell any competitor, for they do not have to meet the usual costs of production and in the last resort they can always fall back on the taxes. Manufacturers sometimes assert that they do not feel the competition of convict labor except in times of depression.[2]

When concentrated on one article, prison-made goods may dominate that market. This would not affect goods sold to a

[1] United States Commissioner of Labor, *Twentieth Annual Report*, pp. 11, 23.

[2] *Ibid.*, p. 59 (statement of a Minnesota shoe manufacturer).

world market such as cotton and wheat. It is specialization as well as volume that counts.

The further objection of a manufacturer of bungalow aprons was noted by the Bureau in its study:

"The chief cause of complaint, even more than the low figure at which the prison goods are sold, is the selling policy, recently adopted, of selling goods on consignment with the option of returning all unbroken packages remaining unsold and of paying the expense of advertising sales held by local dealers." [1]

The employer of "free labor" can meet this competition in several ways. He may adulterate or otherwise lower the quality of his goods so as to lower his cost of production, or he may give up the particular branch of his trade in which the competition of convict labor is felt. Instances can, however, be given of whole industries which have been practically absorbed by convict labor in certain localities, such as the cooperage industry in Chicago during the 'eighties.

The problem of convict labor competition takes an even more serious aspect when it is considered in respect to interstate commerce. Pressure brought to bear on the government of any one particular state is often successful in getting a law passed forbidding the sale of convict-made goods within that state, but this only means that convict-made products from other states are brought in and sold there. In fact, the publicity given to the system of convict contract labor when a bill to abolish it is being discussed is apt to attract attention to the fact that a new market will be opened for the convict-made goods of other states.

Many of the states have laws designed to put some restraint on competition between convict and free labor. No law has, however, yet been enacted approaching in simplicity a proposal made in the Sixty-third Congress, that the convict should be put to remunerative work, charged with his upkeep, and have his labor credited to him; that he should in fact be put on the same competitive footing as an ordinary laborer.[2] The laws bearing directly on the subject of competition are for the most part of recent origin and may be divided into three main classes: (1) The general statement that convicts are

[1] Convict Labor, 1923, *supra*, p. 108.
[2] *Congressional Record*, Vol. LI, 1914, p. 4294.

not to be employed where their work conflicts with free labor (as in Illinois, New Jersey, Minnesota). (2) The prohibition of convict labor in certain forms of industry—*e.g.*, the manufacture of tin cans for fruit packing—(as in Iowa, Maryland, Oregon, Wyoming)—Washington has a provision the reverse of this, by which it refuses to allow its convicts to manufacture anything save jute fabrics and bricks, while Arizona and other states provide that convicts shall be set to work on streets and highways, when they do not compete with free labor. (3) the distribution of convicts among diversified lines of industry, sometimes coupled with the limitation of the number to be employed in a given industry (as in Indiana, Massachusetts, Nebraska, Ohio, Pennsylvania). A few other states have adopted different plans. California has a constitutional provision forbidding the sale of convict-made goods, unless specifically sanctioned by law. Massachusetts, in addition to the provision mentioned above, stipulates that convict-made goods must be sold at not less than wholesale prices. The constitution of Michigan forbids the teaching of a trade to convicts, excepting only the manufacture of such articles as are mainly imported into the state. More recently, New Jersey enacted the provision that prisoners are not to be used on public work to replace free laborers who are locked out or on strike.[1]

Indirect methods of legislating against the competition of convict labor are laws providing that convict-made goods shall be labeled, as in Pennsylvania, Montana, and other states, or that dealers in such goods shall have a license, as in New York. The most effective kind of law is probably the provision that all goods manufactured in prisons shall be for the use of the state (the "state use" system). Backed by satisfactory experience under a federal executive order during the war, the movement is growing to employ convicts exclusively on the state use system, at wages based on the prevailing rate in the locality.

Federal legislation has been attempted for the last thirty years, but little has been accomplished. In the Sixty-third[2]

[1] New Jersey, Laws 1918, C. 147.
[2] Sixty-third Congress, Second Session, H. R. 5601.

Congress, the proposal was made to subject to the law of a state convict-made goods imported into it, which, it was hoped, would check interstate commerce in these goods. The opinion has often been expressed that, if such a law were enacted, the competition of convict labor with free labor would cease. The only legislation yet passed has been against the importation of convict goods into this country; prohibiting the hiring out or contracting out system in federal prisons, and prescribing the articles which the Atlanta and Leavenworth penitentiaries may manufacture, and providing that these articles may only be sold to the United States government at the current market prices as determined by the Attorney-general.[1]

5. Legal Aid and Industrial Courts

We have seen how modern legislation has attempted to give to the individual wage-earner increasing privileges and to place him more nearly on an equality with his employer. Yet these privileges are available to him only so far as the state actually enforces them. We shall see that, in the case of factory legislation,[2] the early statutes assumed that the employee would initiate proceedings in court, with the aid of the ordinary officers of law, to enforce the safety and health laws. Not until many years had passed did the state provide special police, the factory inspectors, to relieve the laborer of this impossible obligation. So in these more fundamental rights growing out of the labor contract the state leaves to the laborer the duty of realizing upon them through the ordinary means of prosecution in court.

Poverty, ignorance, and the technicalities of law often combine to set the remedies beyond his reach. "From birth to death," says a report of the New York Legal Aid Society,[3] "the poor man is the prey of a host of petty swindlers. He is educated to believe that justice is free, and he finds that, to get it, he must pay a lawyer a price he cannot afford." To realize justice he must appeal to charity. Attorneys, in countless individual cases, have given their aid without price, but

[1] United States Statutes at Large, 1924, C. 17; 43 Statutes 6.
[2] See chap. IX, "Administration."
[3] *Thirty-eighth Annual Report,* 1913, p. 23.

it cannot be expected that they can meet the need without neglecting their regular clients. Yet without their aid the chance of the laborer's success in the legal battle is negligible.

The reports of legal aid societies are filled with cases of injustice that calls for an attorney. Wages are withheld. Pawnbrokers and "loan sharks" command usurious rates of interest on small loans, and compel their victims to sign papers, such as chattel mortgages and wage assignments, of whose contents they are ignorant. Wage exemption laws are nullified by garnishment proceedings brought against the employer to attach wages not yet paid. The laborer must then have an attorney to secure the release of his wages, and he may lose his position, for employers often make it a rule to discharge employees whose wages are garnisheed. Thus, even the threat of garnishment may serve, not only to nullify his exemptions, but to force him to pay unjust claims out of wages not exempt. Foreigners are a class especially exposed to fraud. The abuses of peonage, vagrancy laws, and the padrone system have already been mentioned.[1]

Against these invasions of their legal rights wage-earners are for the most part helpless to defend themselves. The majority of their grievances involve small amounts which do not justify the employment of a lawyer. Besides, there are the initial court costs, such as fees for filing, fees for serving summonses and subpœnas and for attaching property and fees to clerks of court in contested cases. To the man with a small claim the remedy may cost more than the result.

(1) *Private and Public Legal Aid*

To remedy these abuses, private charity has found a large field. Legal aid societies have been organized in some forty American cities. Their object is "to render legal aid and assistance gratuitously to all who may appear worthy thereof, and who from poverty are unable to procure it."[2] The first was started by certain German merchants in New York in 1876 to help poor German immigrants, and was called the German Law Protection Society, but soon extended its aid

[1] See "Peonage," p. 37; "Padrone System," p. 45.
[2] Legal Aid Society of Philadelphia, *Thirteenth Annual Report*, 1906, Constitution, Art. I, Sec. 2.

to others. In 1890 Arthur von Briesen, called the "father of the legal aid society movement," became president, and the name was changed to the Legal Aid Society of New York. The society has confined its work to wage-earners, but without regard to nationality, race, or religion. The applicant must be one whose claim is too small or who is too poor to hire an attorney, a poor man being defined as one whose income may be just sufficient to maintain him, but not sufficient for extraordinary demands. It is the aim of the society to cooperate with and not to compete with other lawyers. Its attorneys are under agreement to have no other legal business and they are not permitted to recommend any particular attorney to applicants whom the society may reject. A case to be accepted must be unquestionably meritorious, and this is ascertained by investigation and an impartial hearing of both sides. Finally, the society makes every effort to settle cases out of court, and, up to the moment of trial, if a reasonable offer of settlement is made, advises its client to accept. The policy is to discourage litigation in such a way as to protect the rights of all. In 1924 there were only 1,211 appearances in courts and 207 hearings out of a total of 30,474 cases handled.[1]

From New York, legal aid societies have spread throughout the United States and Europe. In 1920 there were forty-one societies with 90,000 cases, while in 1924 there were seventy-two societies with 120,000 clients in the United States.[2] The New York Society has collected $3,558,105.96.[3] In the United States they are generally unincorporated voluntary associations, conducted, with one exception,[4] by private individuals. In 1911 the first national conference of legal aid societies was held in Pittsburgh, thirteen of the forty organizations in the country being represented. The second was held in New York in 1912, with delegates from sixteen societies. At this time the National Association of Legal Aid Societies was established, the objects being to give publicity to the work, to bring

[1] Forty-ninth Annual *Report* of the President, Treasurer and Attorney of the Legal Aid Society for the year 1924.
[2] *Legal Aid Review*, October, 1925, pp. 4-5.
[3] See *Report, supra.*
[4] Kansas City, Mo.

about cooperation and increased efficiency, and to encourage the formation of new societies.[1]

The legal aid movement has flourished especially in Germany. In 1911, there were 1,016 societies[2] which in 1910 had 1,546,971 cases. In 1913, they held a convention at Nuremberg, which was attended by delegates from the United States, Denmark, Holland, Belgium, Austria, and Switzerland. In London, the "Poor Man's Lawyer's Association," with "centers" in settlements and missions, gives gratuitous legal advice to persons who cannot afford a solicitor, but does not furnish assistance in court.[3] It is sometimes objected that legal aid will encourage litigation, but the record of cases settled out of court by legal aid societies does not support this view.

So far legal aid is almost entirely a private enterprise, and, excellent as has been the work, it is restricted to a few of the larger cities. Even there the work has been seriously hampered by lack of funds, a handicap repeatedly mentioned in the reports. There is, accordingly, an increasing demand that legal aid be made a function of government and thus put within the reach of all. Several attempts in this direction have been made in the United States. Kansas City, Mo., has the distinction of possessing the only municipal free legal aid bureau in the United States. It was organized as a department under the board of public welfare, in August, 1910.[4] Los Angeles County, Cal., was the first to establish the office of public defender,[5] the duties in civil cases being the prosecution of actions for the collection of wages and other demands of persons who cannot afford counsel, in cases where the sum involved does not exceed $100. This officer also defends such persons in civil litigation, when they are being unjustly harassed. Costs are paid from the county treasury. Similar officers were within the next few years appointed in half a dozen other cities, including Portland, Ore., and Minne-

[1] Chicago Legal Aid Society, *Bulletin No. 2*, 1912-1913, p. 3.
[2] W. E. Walz, "Legal Aid Societies, Their Nature, History, Scope, Methods, and Results," *The Green Bag*, Vol. XXVI, 1914, p. 101.
[3] Arthur Blott, "Legal Dispensaries in London," *Legal Aid Review*, Vol. IV, 1906, No. 3.
[4] See Board of Public Welfare, Kansas City, Mo., *Reports*.
[5] Los Angeles County Charter, Sec. 23. Became effective July 1, 1913.

apolis, Minn.,[1] while elsewhere, as in New York City, committees of "voluntary defenders" sprang up. Though work of this nature is efficacious in obtaining justice and reducing its expense for the poor man, the question of the law's delay has not been solved. The public defender does not have power to hear and determine questions involving the payment of wages. His findings might be made final on all questions of fact, and, when the findings are filed in court, judgment might be entered accordingly.[2] The public defender would thus have the functions of an industrial court as later described. A plan has been worked out for the cooperation of students in the law school and the legal aid society in several of the larger cities, notably Chicago. Under this plan the students devote a definite portion of their training period to work in the legal clinic which is generally under the direction of both the faculty of the law school and the Legal Aid Society. Under this plan, a larger volume of work may be handled by the society, and the students receive practical experience.

A provision for the collection of wages in California is the Payment of Wages Act of 1911. It provides for immediate payment of wages due to a discharged employee and for payment in five days to an employee not having a definite contract who quits or resigns.[3] All other wages fall due at least once a month, and must not be withheld more than fifteen days after that time. In November, 1914, the act was declared unconstitutional by a district court on the ground that in effect it permitted imprisonment for debt, which the state constitution prohibits except in case of fraud.[4] Although the statute did not provide imprisonment as a penalty and was silent as to the process by which the court might obtain jurisdiction of the person of the offender, in the test case arrest and detention pending a hearing were the means used. Accordingly, in 1915, an amendment to the payment of wages law was passed.[5] Instead of the earlier $500 fine for violation if an employer fails

[1] Bridgeport, Hartford, New Haven, and San Francisco now have public defenders.

[2] Recommended by the public defender in a letter to the Milwaukee Bar Association, March, 1914.

[3] California, Laws 1911, C. 92.

[4] *Ex parte* Crane, 26 Calif. App. 22, 145 Pac. 733 (1914).

[5] California, Laws 1915, C. 142.

to pay in full within five days after the same are due, the wages of an employee who leaves or is discharged are to continue at the same rate until paid, or until action is commenced, but in no case after thirty days. No employee who refuses or avoids payment is entitled to benefit under the act for such time as he avoids payment. Wilful refusal to pay for labor, with intent to secure a discount, or to harass or defraud, constitutes a misdemeanor. The bureau of labor statistics enforces the act. During the year ending June 30, 1922, no fewer than 12,349 claims for wages were filed, and 5,643 claims were collected, amounting to $228,813.49.[1] This is a material increase over preceding years. The majority of cases are settled within three days of filing the claim.

In 1910, following the recommendation of a state immigration commission appointed to investigate the condition of aliens in the state, the legislature of New York created a bureau of industries and immigration subordinate to the department of labor, whose object was to give newly arrived immigrants a fair start. This was to be done by securing to aliens a hearing for complaints in their own language, the bureau to act as mediator in securing the enforcement of existing laws to prevent exploitation. The chief investigator brings the parties together at a hearing and tries to adjust the differences. If he fails, a civil case is turned over to the Legal Aid Society.

This system of state legal aid for immigrants was extended to all wage-earners by a section of the New York industrial commission law of March, 1915: "The commission shall render all aid and assistance necessary for the enforcement of any claim by an employee against his employer, which the commission finds reasonable and just and for the protection of employees from frauds, extortions, exploitation, or other improper practices on the part of any person, public or private; and shall investigate such cases for the purpose of presenting the facts to the proper authorities and of inducing action thereon by the various agencies of the state possessing the requisite jurisdiction."[2] Under this act, the state industrial commission is made an agency for providing the services of a lawyer to wage-

[1] California, Bureau of Labor Statistics, *Report*, 1921-1922.
[2] New York, Laws 1915, C. 674, Sec. 52e.

earners unable to pay for them. It lacks, however, a provision making the findings conclusive in court proceedings.

Through the influence of Dean John H. Wigmore, the League of Nations has become interested in legal aid societies. A meeting was arranged in Geneva in July, 1924, to which was invited one expert from each of the following countries: America, England, Norway, Denmark, France, Italy, and Japan. Plans for taking care of international cases, *i.e.*, where one party is a foreigner, and for coordinating the work of similar character being done in other countries, were discussed.[1]

(2) *Industrial Courts*

In Europe, a different type of legal aid has been evolved, taking the place, not of the lawyer, but of the judge. This is the industrial court, or *conseil de prud'hommes*. Industrial courts are special courts for the settlement of disputes arising out of labor contracts between employers and employees, and their purpose is "to settle by conciliation whenever possible and by legal judgment when conciliation fails, but in any event cheaply, quickly, and by means of a court composed in part or in whole of elected representatives of the two classes, all individual legal cases which arise from the relations of employer and employed."[2] The first industrial court was founded at Lyons, France, in 1806, for the silk industry. The law creating the Lyons court provided that similar courts might be established in all the factory cities of France, and accordingly their number has increased steadily. When the left bank of the Rhine in 1815, and Alsace-Lorraine in 1871, became German territory, the industrial courts were retained, and in 1890 a general law provided for their establishment throughout the empire. Industrial courts similar to the French were introduced into Belgium in 1859, while Austria followed in 1869, Italy in 1893, and Spain in 1908. In Switzerland, Geneva was the first canton to take up the idea, creating an industrial court on the French model in 1882. In 1910, only seven of the Swiss cantons lacked legislation of this character.

[1] "International Arrangements for Legal Assistance for the Poor," *Legal Aid Review*, January, 1925.

[2] United States Bureau of Labor, *Bulletin No. 98*, January, 1912; "Industrial Courts in France, Germany, and Switzerland," Helen L. Sumner, p. 273.

There are, in general, three types of industrial courts: (1) The French, in which only employers and workers are represented, and the number of members is even. (2) The German, in which the president is neither an employer nor a worker, and the number of members is odd. (3) The Swiss, which is an adaptation of the ordinary court, with the addition of special "assessors," or advisers, to the judge.[1] In all three types the employers and workmen are equally represented.

With respect to jurisdiction, a labor contract of some kind is essential, but the idea is interpreted to cover any relationship between wage-givers and wage-receivers. The great majority of cases are for wages due,[2] but discharge without notice is also a frequent cause of complaint. By far the greater number of complaints are made by workers. In 1908, in Germany as a whole, 5,672 cases were brought by employers and 106,269 by workers. Most of the complaints are for small sums.

Conciliation being the chief object of industrial courts, the procedure is a radical departure from that of the ordinary court. Personal appearance of the parties is required, except for a good excuse, as illness or absence from the city. In Germany, parties may be represented only by persons in the industry, but in France lawyers are allowed to be present, either to represent or assist the parties.[3] Lawyers are permitted in Spain also, but not in Basel, Zurich, or Geneva. The proceedings are much less formal than in an ordinary court, and the president takes an active part. Preliminary hearing for the purpose of conciliation before a section of the court is provided for in France and Germany. More than half the cases are settled by conciliation, and, as a large number are not contested, or are settled by default, only a small percentage call for formal judgment.[4]

The salient advantages of the industrial courts are rapidity

[1] Two cantons have courts based on the French model (Geneva and Vaud), and four have the German type (Lucerne, Berne, St. Gall, Neuchâtel).

[2] In Berlin in 1908 more than one-half the complaints were for wages and a third about illegal discharge.

[3] In practice, lawyers appear before the board of judgment in Paris in only 10 per cent of cases, and before the board of conciliation in only 5 per cent.

[4] In 1908 only 17 per cent of cases in Paris and 9 per cent in Berlin required formal judgment.

and cheapness. Cases are set for as early hearing as possible, after complaint, and only necessary delays are permitted. In France, cases must be settled in four months, and in Germany in 1908 only 1.5 per cent of cases brought to final judgment lasted over three months. Expenses exceeding the fees collected are met by the municipalities over which the court has jurisdiction, or, in the case of courts with wider jurisdiction, by the state. In such cases there are no fees; in others the fees are low. Members of the courts are compensated by fees or salaries, the method varying within the country. In Germany the president receives a salary, and the representatives of employers and employees receive fees for time in court.

Wherever established, industrial courts are held indispensable, the fact that no dispute is too insignificant for them being regarded as a special advantage. They are, however, much more successful with small-scale production than with the factory system, the reasons being that in the latter case standardization of conditions obviates many disputes, and also that employees fear blacklisting if they bring suit.

No such institution exists in English-speaking countries. In Great Britain the Arbitration act of 1824 was designed to cover individual disputes, but the procedure was too intricate and costly ever to be applied. The "Councils of Conciliation" Act of 1867 permitted industrial courts like the French, but no true judicial tribunal was ever created under it.[1] In the United States, a Pennsylvania law, enacted in 1883, attempted to establish a sort of industrial court, but none was ever created and ten years later the law was repealed. The constitutions of New York and a few other states contain provisions for courts of voluntary arbitration, but no courts were ever established.

In the United States, the courts of small claims, as they are most often called, have developed along quite different lines. The first of these was the conciliation court, of Cleveland, Ohio. It grew out of a provision in the Municipal Court Act, designating a clerk to assist persons unable to hire a lawyer in preparing and filing papers, and, if possible, to bring about a settlement. An experienced man was selected by the chief jus-

[1] See also "Mediation by Government," p. 135. The above description applies to industrial courts in their relation to the individual bargain. In some cases they also deal with the collective bargain.

tice, and he often acted successfully as a mediator. In 1912, 1,200 cases were thus settled out of court. All services were free. Since March, 1913, a conciliation branch of the court has been in operation. The fee is usually 25 cents, never more than 45 cents, and all writs are served by registered mail. Lawyers are not allowed to represent the parties, and no set procedure is required. Each party is allowed to state his case in his own way. When both sides have been heard, the judge must seek to effect an amicable adjustment of the differences between the parties.[1] Ordinarily, he obtains their consent that he shall adjust the issue himself. The Cleveland court differs from the European industrial courts in that neither employers nor workmen are represented on the bench, the judge is not elected by the two classes, and the court does not confine itself to disputes arising out of the labor contract. It resembles them in that it is an authoritative tribunal, instead of being merely a private society, like the legal aid agencies of the United States.

In addition to the Cleveland court, there are in successful operation such courts in seven states and three cities.[2] Kansas in 1913, independently of Cleveland, established a "small debtors' court" which was nothing more than a conciliation court. In 1915, Oregon established a small claims department of the district court and in 1916 the Chicago municipal court created by rules a special division for small cases, the maximum being $200. In 1920 Philadelphia and Spokane followed, in 1921 California and Minnesota. In 1922 Massachusetts passed a state act, and in 1923 Iowa and Nevada did likewise.

To what extent it would be possible to apply the European industrial court system in the United States is as yet an open question. People have not awakened to the need, and they are not prepared for such a system by habits of organization and joint action of interests. It is improbable that industrial courts would be created generally by local initiative, as in France, and even if the system were made mandatory by the state government, as in Germany, it would require a state agency to guide

[1] R. C. Moley, "Justice through Common Sense," *The Survey*, October 31, 1914, p. 101.

[2] Massachusetts, California, Minnesota, Oregon, Iowa, Idaho, and Nevada. The cities are Chicago, Philadelphia, and Spokane. *Legal Aid Review*, April, 1924.

local governments in starting them. It is possible that the California wage payment law and the New York industrial commission law, above referred to, may lead to state and local advisory boards of employers and employees to assist the state authorities in executing the laws, and that, eventually, through the enlightenment of public opinion and through practice in cooperation between employers and employees,[1] the industrial court may be successfully modified and adapted to American conditions.

6. The Laborer as Citizen

(1) Voting

There is a growing tendency among the states to recognize the civil rights of the employee by providing holidays on election days; compelling time to be allowed employees to vote and providing means for absent voting.

Forty states [2] and territories have declared that no employee shall be compelled to labor during the afternoon, and some include the whole day, upon which there is a general election in progress. Six states and territories have such a law applying to primary election days.

In line with election-day-holiday laws are those guaranteeing the exercise of the voting privilege. The majority of these laws provide that the employer must, upon prior notification, permit employees to leave the establishment, some time between the opening and closing of the polls, for the purpose of voting and that the employee shall not be subject to any penalty because of the exercise of the privilege. In Illinois the provision for absence was held valid, but the portion of the law providing a penalty was held unconstitutional on the ground that it was an unlawful attempt to regulate private contracts, that it was not a proper exercise of the police power, and that

[1] See chap. IX, "Administration."

[2] General Election days: Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Philippine Islands, Porto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Primary Election days: California, Hawaii, Nevada, Missouri, South Dakota, and Wisconsin.

it was taking property without due process of law.[1] Twenty-three states and Alaska have laws upon this subject.[2]

Laws that probably originated in a desire to permit railroad employees to exercise their franchise right at some point most convenient for them, whether in their home precinct or not, have not become general. Although the labor aspect of these "absent voters" laws has been somewhat swallowed up, yet railroad and similar employees may still enjoy the benefits. A majority of the states permit all absent voters to vote by mail; some specifically indicate that their laws were enacted for employees of railroad companies and similar employees, while another group permit absent voting, but limit it to voting within the state itself. In these states the laws are more of the nature of labor legislation than in those which extend the law to other jurisdictions.[3]

Some effort has been made to protect the employee as a voter from coercion by the employer. More than three-fourths of the states have laws which in general provide that any employer who attempts by coercion, intimidation, or threats to discharge or to lessen the remuneration of an employee to influence his vote in any election, etc., is guilty of a misdemeanor and is liable to a fine. Some of the methods prohibited are solicitation of funds, printing political advertisements on the pay envelopes, or distributing printed matter carrying a threat of discharge unless a certain party or candidate is supported.[4]

(2) National Guard Duty

Nearly one-third of the states have provided that members of the National Guard shall not be wilfully obstructed in their business nor deprived of employment because of such membership.

[1] R. S. of 1917, C. 46, Sec. 312, People *v.* Chicago, Milwaukee and St. Paul Railway Company, 306 Ill. 486, 138 N. E. 155 (1923).

[2] Alaska, Arizona, Arkansas, California, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts,, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, Ohio, Oklahoma, South Dakota, Utah, West Virginia, Wyoming.

[3] "Labor Laws of the United States with Decisions of Courts Relating Thereto," United States Bureau of Labor Statistics, *Bulletin No. 370.*

[4] Colorado, Acts 1923, Sec. 7830; Wisconsin, Statutes 1923, Sec. 1219.

CHAPTER III

COLLECTIVE BARGAINING

Collective bargaining dates back as far as individual bargaining. Its first examples are town charters and merchant gilds. The townspeople through a collective contract secured certain rights from the king in return for a money payment. Among these rights none was more valuable than that of the doctrine "City air makes free." If a serf had been in a free city for a year, he became a free man. Freedom was established through collective bargaining. Without freedom there can be no individual contracts. Historically, individual and collective bargaining have been interdependent; the one has been necessary to maintain the other.

1. The Law of Labor Combinations

Yet collective bargaining for a long time was viewed with suspicion. All associations were treated as conspiracies. They were much more powerful than individuals, and hence were considered dangerous. Collective bargaining moreover, implies a restriction of the freedom to make individual bargains. To bargain collectively there must be a contract or an agreement between the members of the association that each shall give up his right to make an individual contract, and shall either make his contracts only as the majority decides or shall permit the agents elected by the majority to make his contracts for him. In order to enforce such bargains the association must have full disciplinary powers and must be allowed to determine who shall be admitted to membership. Nonmembers do not share the benefits of the collective bargain; in fact, they are often injured thereby. Collective bargaining seriously restricts the freedom of both members and nonmembers to make individual bargains.

(1) *Origins of Collective Bargaining*

Collective action was permitted in early law only under grant of a special charter from the king. Thus, the king granted charters to free citizens, and to merchant and craft gilds. Armed with a charter, the association might not be prosecuted as a conspiracy, and was conceded the great privileges of acting as a unit and continuous existence through the right of succession.

Of these early associations, the craft gilds were the nearest approach to the trade unions of to-day; yet their functions were very different. They were composed of three classes: the masters, the journeymen, and the apprentices. The masters and the journeymen worked side by side, with the same tools. It was easy for an apprentice to become first a journeyman, then a master. Hence the relations of the masters to the journeymen and apprentices received but little attention in the charters which created gilds. The *wage bargain* which the master made with the journeyman and the apprentice was as yet not a matter of public concern. The public was interested primarily in the other bargaining function of the masters; their *merchant* function, the making of the *price bargain* with consumers. The consumers dominated the government; and it was their concern to prevent extortionate prices and the substitution of "bad ware." [1]

With the gradual expansion of markets, the merchants gained recognition in society. Charters were granted to the merchant adventurers who risked their capital in foreign enterprises, and patents of monopoly were granted to merchants in the domestic trade. Later came the special charters to banks, canal, turnpike, and railway companies and other corporations. Thus, the right of association was granted to capital. With freedom from the taint of conspiracy, the corporation charter conferred upon the incorporators the privilege of "limited liability." In a partnership, the members are responsible to the full extent of their resources for the contracts and torts of the partnership. But the members of corporations have only "limited liability," usually only to the extent

[1] See John R. Commons, *Labor and Administration*, 1913, "American Shoemakers," p. 219 ff.

of their subscription. At first, incorporation could be secured only through special act of the legislature; and corruption was often employed to secure such charters. Finally, in the decade of the 'fifties, general corporation laws were enacted. It is now the privilege of all persons to combine their capital and form corporations with but few restrictions. So complete is the right of association of capitalists that the law has introduced the fiction that corporations are persons, entitled to many of the advantages of natural persons; and the rule of "limited liability" lessens the responsibility of the members for the acts of the corporation.

The modern corporation has taken over both of the bargaining functions of the masters of old: the *price bargain* and the *wage bargain.* In the first the corporation performs the *merchant* function, and its object is to get as high prices as possible from the consumer. In the second it performs the *employer* function, and its object is to give as low wages as possible to the laborers.

Collective action by capital has not stopped with the corporation. The corporations have themselves become members of associations. In these associations it has generally been found advantageous to separate the two bargaining functions. *Manufacturers' associations,* "pools," and "trusts" are formed to deal with the price of products to consumers. *Employers' associations* deal with the wages paid to labor. Practically the same individuals may compose these associations; but their functions are totally different.[1]

Labor did not win the right of collective bargaining as early as capital. When, in the eighteenth century, in England, the laborers combined to enforce their demands for higher wages they were prosecuted for "conspiracy." In the journeyman tailors' case,[2] for example, all combinations to raise wages were held to be conspiracies. This common law doctrine was inherited by our fathers from England. In the mother country the journeyman tailors' case was followed by the enactment of statutes to penalize combinations to raise wages. In 1824 and 1825 these statutes were repealed, and a considerable degree of freedom to combine was conceded to labor. In

[1] John R. Commons, *Labor and Administration,* especially p. 262.
[2] 8 Mod. 11 (1721).

1871 trade unions were declared not to be illegal combinations in restraint of trade. In 1875 labor was entirely freed from the conspiracy law in its criminal aspects. Finally, in 1906 the law of civil conspiracy also was swept away, and the trade unions were conceded complete exemption from responsibility for damages growing out of tortious acts alleged to have been committed in their behalf.

(2) *Development of Law Upon Collective Bargaining in the United States*

In the United States, also, prosecutions for "conspiracy" often followed the early strikes for higher wages. In the indictment or in the charge to the jury in some of these cases there was presented the doctrine of the common law that all combinations of workingmen including even those to raise wages are illegal.[1] This was never unchallenged law in the United States; and in only one case did a court of final jurisdiction hold this view.[2] Yet it was considered that there was something unlawful about combinations of laborers. They were denounced as being injurious to the public, because they were injurious to employers and made it difficult for them to compete in distant markets. Naturally the journeymen looked upon all of these cases as prosecutions brought by the masters to resist increases of wages. This was undoubtedly the real motive of the prosecution; but in most of these cases the restrictive rules and practices of the unions were emphasized, not the effort to raise wages.

In the earliest cases the juries always convicted; but as unions became more frequent public sentiment ceased to regard them with alarm. In nearly all conspiracy cases of the 'thirties the juries acquitted, although in most of them the defendants were guilty of conduct which would now be described as "intimidation." As a climax, the Massachusetts Supreme Court, in the famous case of Commonwealth *v.* Hunt in 1842, held that even a strike for the closed shop is lawful.

For two decades thereafter there were few unions and few strikes. With the revival of unionism in the 'sixties, however,

[1] For these early cases see *Documentary History of American Industrial Society*, Vols. III and IV.
[2] People *v.* Fisher, 14 Wendell 9 (1835).

prosecution for conspiracy again became quite frequent. In these cases there were many convictions and not a few severe sentences. This led to a demand by the labor organizations of the day for "the repeal of the conspiracy laws," and to the enactment in the late 'sixties and in the 'seventies of laws in several of the industrial states which expressly legalized combinations of workingmen to raise wages or to reduce hours of labor. Despite these statutes, however, criminal prosecutions for conspiracy continued to be quite frequent until about 1890, and thereafter ceased to be of much importance only because injunctions had become the most usual form of action in labor disputes.

The development of the law of labor combinations in this country thus differed radically from that of England. In England, all combinations of workingmen were at the outset regarded as criminal conspiracies, but by parliamentary enactments labor has been freed entirely from the restrictions of the conspiracy doctrine. In the United States the early English doctrine that combinations to raise wages are unlawful was never generally accepted as good law. On the other hand, labor in this country never gained complete relief from the conspiracy doctrine.

The tendency in this country, with but rare exceptions, has ever been toward increasing restrictions upon the activities of labor unions in their combats with employers and employers' associations. This tendency was particularly pronounced during the 'eighties and early 'nineties. During this period, boycotts were first condemned as unlawful, strikes for many different purposes fell under the ban of the courts, and anti-trust laws were applied to the acts of labor unions. Most important, however, was the gradual identification of "business" with "property." "Good will," by which is meant the established relationships of a going business, had been recognized as property at an earlier date. Not until this period, however, did the courts recognize as property, also, the right *"to enter or do business,"* by which is meant unhindered access to the commodity and labor markets.

This right *"to do business"* is of great importance in labor disputes. Strikers may attack the physical property of em-

ployers; but the police, the military, and the criminal laws are usually adequate to deal with this menace. But without any destruction of physical property the employer's business may be ruined. Picketing may prevent his getting new employees, and boycotting may keep him from selling his products. While the modern manufacturer can often survive the destruction of his physical property, obstruction of access to the labor market or to the commodity market brings with it certain ruin.

The recognition of "business" as "property" ushered in the era of injunctions in labor disputes. Injunctions are sought primarily to protect the expectancies which are embraced in the right *"to do business."* In fact nobody thought of injunctions in connection with labor disputes until these expectancies were recognized as property.

The first injunction was issued in either 1883 or 1884, but not until the Debs case, ten years later,[1] did the public generally know anything about the use of injunctions in labor disputes. Since then the injunction has been the legal remedy most usually sought by employers when menaced by strikes and boycotts. In consequence, organized labor has ever since made relief from "the abuse of injunctions" and from "government by injunctions" its foremost legislative demand. Much of the distrust of the courts and the bitterness manifested by workingmen in labor disputes arise from this cause. Injunctions have probably hurt labor less than is generally represented and certainly have often proved disappointing to employers; but as a source of friction and as a cause of complaint they rank among the most serious of present-day problems in industrial relations.

In 1908 organized labor was suddenly aroused to a new menace, which, at that time at least, appeared even more serious than the injunction and the conspiracy doctrine. This was the damage suit and the Sherman Anti-Trust Act. The occasion for this alarm was a decision rendered by the United States Supreme Court in the Danbury Hatters' case,[2] in which a hat manufacturer was allowed in excess of $250,000 damages

[1] *In re* Debs, 158 U. S. 564, 15 Sup. Ct., 900 (1895).
[2] Loewe *v.* Lawlor, 208 U. S. 274, 28 Sup. Ct., 301 (1908).

for losses sustained through an interstate boycott of his goods. This decision was based upon the Sherman Anti-Trust Act, particularly the section allowing treble damages to anyone injured through an illegal restraint of trade.

The Sherman Anti-Trust Act was passed in 1890, and at the time of its passage was generally thought to have no application to labor unions of their activities. Almost immediately thereafter, however, this act was held applicable to labor disputes, and as early as 1900 the American Federation of Labor sought legislation to exempt labor unions from its provisions. Not until the decision in the Danbury Hatters' case, however, was the situation regarded as really serious. Then a great fear arose that the Sherman Act might be construed as rendering unlawful labor unions and all their activities. No case actually went thus far, but labor lost no time in fighting vigorously for "relief from the anti-trust laws."

Labor believed it had won such relief when Congress in 1914 passed the Clayton Act.[1] Section 6 of this act declared that "labor of a human being is not a commodity or article of commerce" and provided that the anti-trust laws should not be construed to forbid the existence of labor organizations, nor to restrain their members from carrying out the "legitimate objects" thereof.

Through this same act, organized labor at the time believed it had won, also, relief from injunctions, as far as the federal courts are concerned. This hope was based principally upon Section 20 of the Clayton Act, which provides that no injunction shall prohibit the quitting of work, the refusal to patronize, peaceful picketing or peaceful persuasion, whether these acts are done "singly or in concert," and, further, that these acts shall not be considered "violations of any law of the United States." Hardly less important, labor considered the provisions allowing jury trial to persons accused of violations of injunctions through acts indictable as criminal offenses.

Even before the Clayton Act was passed by Congress, organized labor began a drive to secure similar legislation in all states, and it has continued these efforts ever since. In no less than twelve states so-called "anti-injunction" laws

[1] United States, Laws 1913-1914, C. 323.

were won, most of them modelled after the labor provisions of the Clayton Act.[1]

In actual operation, however, both the Clayton Act and the state anti-injunction laws proved very disappointing to labor. The Clayton Act has not exempted labor from the anti-trust laws and there have been at least as many successful prosecutions of workingmen under these laws as prior to the passage of this act.[2] Similarly, this act has failed to bring about either a reduction in the number of injunctions issued by the federal courts or the elimination of sweeping and drastic clauses.[3] Both sections 6 and 20, in fact, which labor regarded as the most important in the Clayton Act, have been construed as having made no change in the law as previously interpreted by the courts.[4] Only the sections relating to jury trial, in cases where the act constituting the contempt is also a criminal offense, have made any change in the law, despite which they have been held constitutional.[5] As for the state "anti-injunction" laws, they have proved of no greater value than the

[1] Arizona, Laws Second Special Session, 1913, C. 41; Illinois, Acts 1925, S. B. 442; Iowa, Laws 1913, C. 213; Kansas, Laws 1913, C. 233; Massachusetts, Laws 1914, C. 778; Minnesota, Laws 1917, C. 493; New Jersey, Acts 1925, C. 169; North Dakota, Act of February 14, 1919; Oregon, Laws 1913, C. 346; Utah, Laws 1917, C. 68; Wisconsin Laws 1919, C. 211, Laws 1923, C. 208. In addition two states in 1913 passed laws intended to legalize peaceful persuasion: Massachusetts, Laws 1913, C. 690; New Hampshire, Acts 1913, C. 211. A similar act was passed in Wisconsin in 1923 (C. 55).

[2] U. S. *v.* Norris, 255 Fed. 423 (1918); Boyle *v.* U. S., 259 Fed. 803 (1919); Belfi *v.* U. S., 259 Fed. 822 (1919); U. S. *v.* Bricklayers' Union, 4 *Law and Labor* 95 (1922); Curran Printing Co. *v.* Printing Council, 5 *Law and Labor* 91 (1923); O'Brien *v.* U. S. 290, Fed. 185 (1923); Vandell *v.* U. S. 6 Fed. 2d, 188 (1925); Coronado Coal Co. *v.* United Mine Workers, 268 U. S. 295, 45 Sup. Ct. 551 (1925).

[3] Nearly 300 injunctions were issued by federal courts during the railroad shop crafts' strike in 1922 (address of U. S. Senator George W. Pepper to the American Bar Association on "Injunctions in Labor Disputes," 1924). This was undoubtedly the largest number of injunctions issued in connection with any single strike. One of the injunctions issued during this strike, procured at the instance of Attorney-general Daugherty from Judge Wilkerson at Chicago (U. S. *v.* Railway Employees' Dept., 283 Fed. 479 (1922); 290 Fed. 978 (1923), was one of the most sweeping and one of the most criticized of injunctions ever allowed in this country.

[4] American Steel Foundries Co. *v.* Tri-city Central Trades Council, 257 U. S. 184, 42 Sup. Ct. 72 (1921); Duplex Printing Press Co. *v.* Deering, 254 U. S. 443, 41 Sup. Ct. 172 (1921).

[5] Michaelson *v.* U. S., 266 U. S. 42, 45 Sup. Ct. 18 (1924).

Clayton Act. In most states they have been narrowly construed, and when the Arizona Supreme Court gave a broad construction to the law of that state, the United States Supreme Court held that as thus interpreted this act violated the fourteenth amendment.[1]

The American Federation of Labor hailed the Clayton Act as "Labor's Magna Charta" and "Bill of Rights." In its convention of 1925, however, it frankly acknowledged that this act has fallen far short of its expectations and decided to try an entirely new approach to the problem, that of limiting the jurisdiction of the federal courts in such a way as to render practically impossible the issuance of any injunctions in labor disputes. At the beginning of 1926 a new bill, consistent with this new line of attack, was in process of preparation for introduction both in Congress and in the state legislatures.

(3) Doctrine of Conspiracy

Most of the cases of which labor complains have been premised, not upon the federal anti-trust laws, but upon the common-law doctrine of conspiracy. This doctrine makes illegal some acts done in pursuance of an agreement which are legal when done by one person. One manner of explaining this result is that when men combine, their motives become of importance. Their combination is legal when their motive is primarily to benefit themselves, and illegal when they aim primarily at the injury of another. One person may sever all business relations with another, if not under contract to continue them, regardless of the motives which may lead him to take this step. But when workingmen combine to go on strike or to boycott an employer, the courts will inquire whether their primary motive is injury to the employer or benefit to themselves.

To understand the full import of the conspiracy doctrine it is necessary to note two of its corollaries. One is the proposition that when the purpose of the combination is illegal every act done in pursuance thereof is rendered illegal, though the act may be innocent of itself. Acts normally protected by the constitutional guarantees of free speech, free press, and public assembly, become unlawful when done in furtherance

[1] Truax *v.* Corrigan, 257 U. S. 312, 42 Sup. Ct. 124 (1921).

of an unlawful purpose. As put by the Supreme Court of the United States:[1] "No conduct has such absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be a step in a criminal plot, and if it is a step in a plot neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law." Again, if an illegal plot has been formed, all of the conspirators are responsible for the acts of any of the conspirators done in pursuance of the common object. Once it is established or taken for granted that the workingmen have conspired, any and all of them are liable for acts of violence which may be committed by some of them.

The soundness of the doctrine that the legality of a combination depends upon the motives which actuate it has been often questioned in recent years. It is most difficult to determine what is the primary motive of the workingmen in undertaking a strike or a boycott. They aim both to injure the employer and to benefit themselves. The bias of the judge necessarily plays a large role in the determination of which of these is the controlling motive. The doctrine that it is the immediate object and not the ultimate purpose which is controlling, helps but little. In most labor disputes many questions are at issue. A demand for the closed shop may be coupled with the demand for an increase in wages. The latter is recognized by all courts to be legal, while the former is held illegal by many courts. The result has been confusion and arbitrariness in the law. Where one judge sees only a lawful combination, another discovers an unlawful conspiracy.

The fundamental premise in the conspiracy doctrine is that the many have a power for harm which no one person can exercise. Hence, while in the class of acts which are involved in labor disputes the motive is considered unimportant when these acts are done by one person, it becomes a determining factor when they are done in pursuance of an agreement among several. In American law the corporation has been made a person. This makes the premise of the conspiracy doctrine an absurdity. The power of the large corporation,

[1] Aikens *v.* Wisconsin, 195 U. S. 194, 25 Sup. Ct. 3 (1904).

though a single person in the law, is greater than that of the combination of workingmen.

Considerations such as these have led some courts to abandon the old form of statement of the conspiracy doctrine. They start with the proposition that the employer has a right of free access to the labor market and to the commodity market. Intentional interference with this right to do business is *prima facie* wrongful. Only when the injury done to the employer is the result of the exercise of equal or superior rights by the workingmen is it justified. These courts distinguish between *malice in fact* and *malice in law*. Whether personal ill will and spite, malice in fact, actuates the workingmen, they hold to be of no importance. Malice in law determines the legality of their actions; and malice in law is merely the intentional infliction of injury without justification.[1]

In actual application, however, malice in fact is an important factor in determining whether there is malice in law. If intentional infliction of injury without justification is unlawful, everything turns upon what is considered a sufficient justification. This involves an evaluation of the respective rights of capital and labor. The employer has a right to conduct his business without interference. The non-unionist has a right to earn his living. The union workman has a right to work or not to work, as he chooses. Which of these rights is to prevail when the union workmen go upon strike to compel the employer to discharge the non-unionist? Competition is recognized to be a justification for interference with the rights of others. But when can the workingmen be said to compete with their employers? It is competition when the workingmen aim primarily to benefit themselves, when there is no malice in fact. Thus, the doctrine that intentional injury done without justification is unlawful makes the motive the criterion of the legality of the acts of labor combinations. Though it differs in statement from the older form of the conspiracy doctrine, its substance is the same. As Dean Lewis has put it: "Those who say with Justice Wells that a man is liable for the harm he does if he does it maliciously, mean-

[1] Doremus *v.* Hennessy, 176 Ill. 608 at p. 615, 52 N. E. 924, 54 N. E. 524 (1898); Berry *v.* Donavan, 188 Mass. 353, 74 N. E. 603 (1905); Barr *v.* Essex Trades Council, 53 N. J. Eq. 101, 30 Atl. 881 (1894).

ing by malice without legal excuse, naturally turn to the defendant's motive as at least one of the elements on which the existence of a 'legal excuse' depends."[1] Labor has profited little from the coming in of the "legal excuse" doctrine. It has rephrased the conspiracy doctrine, but has kept its spirit.

In labor cases there is always much discussion of the rights of the respective parties. Thus, it is said that employers have a right to conduct their business as they see fit. The right of the workingmen to quit employment is often described as absolute, on the other hand. These abstract statements read well; but the trouble is that in labor disputes these rights come into conflict. This clash of rights has led the courts to inquire into the motives which actuate the workingmen. To justify holding against labor unions recourse has been had to the theory that the element of combination radically changes the situation. Where the court holds to the conspiracy doctrine, no matter how it may be expressed, the decision is apt to be against the union.

There are a large number of cases, however, in which the courts have held that the fact that acts are done in pursuance of a combination does not affect their legality.[2] Other cases hold that a bad motive cannot render illegal acts which are otherwise lawful.[3] Thus, they sweep away the foundations of the doctrine of conspiracy. The courts of California have gone furthest in this regard. In California quitting work and refusing to patronize are held to be absolute rights of the workingmen, and the fact that these rights are exercised in pursuance of a combination is treated as immaterial.[4] The only limitation upon collective action is that labor shall not resort to coercion or intimidation. The practical conclusion reached in California is that all strikes and all boycotts are lawful.

Even if the motive of the workingman is held to be immaterial, there is wide room for diversity of opinion as to

[1] *Columbia Law Review*, February, 1905, p. 118. See, also, Ames, "How far an Act May Be a Tort Because of the Wrongful Motive of the Actor," in 18 *Harvard Law Review*, pp. 411-422 (1905).

[2] Cooke, *The Law of Combinations, Monopolies, and Labor Unions*, 1908, p. 33, and the cases there cited.

[3] *Ibid.*, p. 17, and cases cited.

[4] Parkinson Co. *v.* Building Trades' Council, 154 Cal. 581, 98 Pac. 1027 (1908); Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909).

the means which labor may employ to gain its ends. There is agreement that coercion and intimidation are unlawful. But what conduct is coercive and intimidating? In California, pressure brought to bear upon third parties through sympathetic strikes and secondary boycotts is treated as not coercive. Picketing, on the other hand, is held to be necessarily intimidating.[1] In other jurisdictions, pressure upon third parties, other than that resulting from persuasion, is treated as coercion, while picketing is often considered legal. There is a pronounced tendency in recent cases throughout the country to say little about the illegal motives of the workingmen and to find the illegality of their conduct in the unlawful means they employ. This may seem to be a great advance for organized labor; but the gain is deceptive. Practically, it makes no difference whether a sympathetic strike is condemned because the motive of the workingmen is held to be to injure the employer, or because it amounts to an effort to coerce a third party. "Coercion" and the "intimidation" are so vaguely defined, that almost any conduct can be considered coercive or intimidating.

Thus, there are three theories which underlie most of the cases involving collective action by labor. The most fundamental of these is the theory that when men combine, the legality of their acts depends upon their motives. Another holds that intentional interference with the rights of others is wrongful, unless it results from the exercise of equal or superior rights. The third theory places emphasis upon the element of coercion and intimidation involved in the acts of combination. In their manner of statement these theories are wide apart; but their practical conclusions have been much the same. No matter which theory a court may entertain, there is great latitude in its application. Under each theory much depends upon whether the demands of the workingmen are justified or unjustified. Hence, the bias of the judge is likely to be determining.

(4) *Application of Theories*

a. Definitions. When we pass from the abstract theories of the courts to their practical conclusions, similar diversity of

[1] Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909). *Ex parte* Williams, 158 Cal. 550, 111 Pac. 1035 (1910).

statement is encountered. In part this is due to real differences in the conclusions reached. In different states the rights of organized labor differ widely. Even in the same state it is often quite impossible to reconcile the several decisions. Dissenting opinions are very common. The confusion which exists, however, is due not only to real differences as to the law, but also to the use of common terms in divergent meanings. The terms "strike," "boycott," and "picketing" are all used in different senses in different cases.

Some courts speak of the "strike" as involving only the collective quitting of work. Others include within that term not only the collective quitting, but also the agreement which precedes it. Even this conception is too narrow. To it must be added the idea that the quitting is but temporary, that the strikers do not consider that they have permanently quit, but that they expect to be employed again on different terms, through coercion of their employers.

As to the term "boycott," it has been truly said that scarcely any two courts treating of the subject formulate the same "definitions." [1] The essential idea in many of these definitions is that third parties are illegally coerced to sever their business relations with the employer against whom the union is waging its fight. Thus, a leading case defined a "boycott" as a "combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause similar loss to them." [2] This definition makes no allowance for the so-called primary boycott, in which no effort to coerce third parties is involved. Sympathetic strikes and strikes against the use of non-union material, on the other hand, are treated as "boycotts," by this definition. Trade-unionists at times use the term in this broad sense, but more commonly only in reference to the collective refusal to buy the products of an "unfair" manufacturer or merchant.

Similar confusion exists as to "picketing." In the case of the American Steel Foundries Company *v.* Tri-City Cen-

[1] Lindsay and Co. *v.* Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127 (1908).

[2] Toledo, A. A. & N. M. R. Co. *v.* Pennsylvania Co., 54 Fed. 730 (1893).

tral Trades Council[1] the United States Supreme Court declared that "peaceful picketing" is a contradiction of terms, and that "picketing" implies coercion and intimidation. Yet it permitted the strikers to have one representative at each factory entrance to announce the strike and peaceably to persuade the employees and prospective employees to join them. Such stationing of representatives at factory entrances is "picketing" as this term is usually used; so that what the court seems to have decided is that only picketing so restricted as to be really peaceful is lawful. Yet the court in so many words says that all "picketing" is lawful.

b. Legality of Unions. Upon the question of the legality of trade unions *per se* there is general agreement among the courts. Statutes have been passed in a number of states which make it a felony to organize or belong to any organization which advocates criminal syndicalism.[2] The unions affiliated with the American Federation of Labor, however, have always been regarded as lawful organizations, except in two decisions, neither of which was rendered by a court of final jurisdiction.[3]

c. Strikes. While the legality of trade unions is not questioned, there have been serious restrictions upon their efforts to make themselves effective. The strike, the most essential of labor's weapons, has often been condemned as illegal. Much confusion exists as to the legality of strikes, due principally to the different meanings in which this term is used. Many courts hold that "striking," in the sense of collectively quitting work, is always legal. In most strikes something more than quitting work is involved. There is an antecedent agreement to quit, there are demands upon the employer, and there is a "threat" that unless he yields a strike will be called. The element of combination enters into the strike. Even after the workmen have quit, they still act in concert. It is the entire combination, of which the quitting work is but a part, which constitutes the strike.

The strike in this sense is not always legal. The rule most

[1] 257 U. S. 184, 42 Sup. Ct. 72 (1921).
[2] See, for instance, California, Laws 1919, C. 188.
[3] Kealy *v.* Faulkner, 18 (Ohio) Superior and Common Pleas Decisions 498 (1908); Hitchman Coal and Coke Co. *v.* Mitchell, 202 Fed. 512 (1912).

generally applied is that when the purpose of the strikers is primarily to injure the employer or non-union workmen the strike is illegal. The Massachusetts Supreme Court has best stated this rule:[1] "To justify interference with the rights of others the strikers must in good faith strike for a purpose which the court decides to be a legal justification for such interference. . . . A strike is not a strike for a legal purpose because the strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike. As we have said, to make a strike legal, the purpose of the strike must be one which the court, as a matter of law, decides is a legal purpose of a strike, and the strikers must have acted in good faith in striking for such a purpose." In other cases, the fact is emphasized that the strikers aim to "coerce" the employer and "threaten" him with loss unless he complies with their demands.

The result of the application of these doctrines has been that strikes have often been condemned as unlawful. The Massachusetts cases are the most extreme in this respect. Almost never have the courts of that state found that strikers were pursuing lawful objects when they endeavored to procure the discharge of non-union workmen or of members of rival unions.[2] They have condemned, also, strikes to procure the removal of objectionable foremen, or the reinstatement of discharged employees and all sympathetic strikes;[3] and they have held that even in lawful strikes union members may not be coerced to participate therein by threats of fines or expulsion.[4] Nowhere else have the courts gone quite so far, but

[1] De Minico *v.* Craig, 207 Mass. 593, 94 N. E. 317 (1911).

[2] Plant *v.* Woods, 176 Mass. 492, 57 N. E. 1011 (1900); Berry *v.* Donovan, 188 Mass. 353, 74 N. E. 603 (1905); Aberthaw Construction Co. *v.* Cameron, 194 Mass. 208, 80 N. E. 478 (1907); Reynolds *v.* Davis, 198 Mass. 294, 84 N. E. 457 (1908); Folsom *v.* Lewis, 208 Mass. 336, 94 N. E. 316 (1911); Snow Iron Works *v.* Chadwick, 227 Mass. 382, 116 N. E. 801 (1917); Bausch Machine Co. *v.* Hill, 231 Mass. 30, 120 N. E. 188 (1918); Folsom Engraving Co. *v.* O'Neil, 235 Mass. 269, 126 N. E. 479 (1920); Slightly contrary, Pickett *v.* Walsh, 192 Mass. 572, 78 N. E. 753 (1906); Cornelier *v.* Haverhill Shoe Mfrs. Ass'n., 221 Mass. 554, 109 N. E. 643, (1915); Shinsky *v.* O'Neil, 232 Mass. 99, 121 N. E. 790 (1919).

[3] De Minico *v.* Craig, 207 Mass. 593, 94 N. E. 317; Hanson *v.* Innis, 211 Mass. 301, 97 N. E. 756 (1912); Reynolds *v.* Davis, 198 Mass. 294, 84 N. E. 457 (1908); Mechanics Foundry and Machine Co. *v.* Lynch, 236 Mass. 504, 128 N. E. 877 (1920).

[4] Willcut & Sons Co. *v.* Driscoll, 200 Mass. 110, 85 N. E. 987 (1908); Casson *v.* McIntosh, 199 Mass. 443, 85 N. E. 529 (1908).

there are many other states in which some kinds of strikes have been held unlawful. In Connecticut, New Hampshire, and Vermont, strikes against non-unionists have been held illegal.[1] In New Jersey closed shop strikes and strikes against non-union material are unlawful.[2] In Pennsylvania there is a statute which reads to a layman as though it legalized all strikes. Yet the courts of that state have held unlawful strikes growing out of jurisdictional disputes, closed shop strikes, and strikes against non-union material.[3] In Illinois the question of the legality of a strike for the closed shop has been several times before the supreme court. In 1905 such a strike was held to be unlawful; in 1912 the court split evenly upon this question.[4] New York has a statute legalizing "peaceful assembling or cooperation" by workingmen "for the purpose of securing an advance in the rate of wages." Elsewhere such strikes are held lawful, even without any such statute. Strikes for many purposes have been condemned by the New York courts. The court of appeals has held unlawful strikes to collect fines from employers.[5] Inferior courts have condemned strikes against non-union material.[6] Some New York cases also hold sympathetic strikes to be unlawful.[7] The question of the legality

[1] Wyeman *v.* Deady, 79 Conn. 414, 65 Atl. 129 (1906); Conners *v.* Conolly, 86 Conn. 641, 86 Atl. 600 (1913); White Mt. Freezer Co. *v.* Murphy, 78 N. H. 398, 101 Atl. 357 (1917); State *v.* Dyer, 67 Vt. 690, 32 Atl. 814 (1894). But see also Cohn and Roth Electrical Co. *v.* Bricklayers, 92 Conn. 161, 101 Atl. 659 (1917).

[2] Booth *v.* Burgess, 72 N. J. Equity 181, 65 Atl. 226 (1906); Brennan *v.* United Hatters, 73 N. J. 729, 65 Atl. 165 (1906); Blanchard *v.* District Council, 78 N. J. 737, 71 Atl. 1131 (1909); Ruddy *v.* Plumbers, 79 N. J. 467, 75 Atl. 742 (1910); Baldwin Lbr. Co. *v.* Teamsters, 91 N. J. Eq. 240, 109 Atl. 147 (1920).

[3] Erdman *v.* Mitchell, 207 Pa. 79, 56 Atl. 327 (1903); House Painters *v.* Feeney, 13 Pa. Dist. 335 (1904); Bausbach *v.* Rieff, 237 Pa. 482, 85 Atl. 762 (1912); Patterson *v.* Trades' Council, 11 Pa. Dist. 500 (1902); Purvis *v.* Carpenters, 214 Pa. 348, 63 Atl. 585 (1906).

[4] O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108 (1905); Kemp *v.* Division No. 241, Amal. Association of Street and Electric Ry. Employees, 255 Ill. 213, 99 N. E. 389 (1912).

[5] People *v.* Barondess, 133 N. Y. 649, 31 N. E. 240 (1892). See also People *v.* Weinsheimer, 117 App. Div. 603, 102 N. Y. Supp. 579 (1907).

[6] People *v.* McFarlin, 43 Misc. 591, 89 N. Y. Supp. 527 (1904); Albro J. Newton Co. *v.* Erickson, 70 Misc. 291, 126 N. Y. Supp. 949 (1911).

[7] Beattie *v.* Callanan, 67 App. Div. 14, 73 N. Y. Supp. 518; 82 App. Div. 7, 81 N. Y. Supp. 413 (1901-1903); Schlang *v.* Ladies' Waist Makers, 67 Misc. 221, 124 N. Y. Supp. 289 (1910). *Contrary:* Searle Mfg. Co. *v.* Terry, 56 Misc. 265, 106 N. Y. Supp. 438 (1905).

of strikes for the closed shop has often come up in New York. The decisions of the court of appeals upon this issue are very difficult to reconcile. In the Curran *v.* Galen case in 1897 [1] a non-union workman who lost his job because his employer entered into a closed shop agreement was held to have an action against the union. In the Cumming case in 1902 [2] the majority of the court squarely sustained a strike to establish a closed shop. In the Jacobs *v.* Cohen case in 1905,[3] however, an effort was made to reconcile the two prior decisions and to consider them both as law. The doctrine evolved seems to be that closed shop is lawful as long as it does not give the union a monopoly in the community in which it operates.

Enough cases have been cited to illustrate the attitude of the courts towards strikes. Strikes solely and directly involving the rate of pay or the hours of labor are everywhere considered legal. Strikes to gain a closed shop, sympathetic strikes, and strikes against non-union material have been condemned in many jurisdictions. Only in California is it a settled law that all strikes are legal.

Because strikes are illegal, it does not follow that there is any effective way of preventing them. Arthur *v.* Oakes [4] authoritatively established the laborers may in no circumstances be enjoined from quitting work. In some injunctions, however, "conspiring to quit" has been enjoined. In others, the union officers have been prohibited from advising or ordering the workmen to go upon strike, or from paying strike benefits. Some courts take the position that such prohibitions amount to an indirect method of compelling the workmen to labor and are, therefore, improper.[5] Some other injunctions, however, have gone even further, directing the union officers to

[1] Curran *v.* Galen, 152 N. Y. 33, 46 N. E. 297 (1897).
[2] National Protective Association of Steamfitters and Helpers *v.* Cumming, 170 N. Y. 315, 63 N. E. 369 (1902).
[3] Jacobs *v.* Cohen, 183 N. Y. 207, 76 N. E. 5 (1905).
[4] Arthur *v.* Oakes, 11 C. C. A. 209, 63 Fed. 310 (1894).
[5] Thomas *v.* Cincinnati, N. O. & T. P. R. Co., 62 Fed. 803, 817 (1894); Wabash R. Co. *v.* Hannahan, 121 Fed. 563 (1903); Barnes *v.* Berry, 157 Fed. 883 (1908); Delaware, Lackawanna & Western R. R. Co. *v.* Switchmen, 158 Fed. 541 (1908); Kemp *v.* Div. No. 241 Amalgamated Association of Street and Electric Railway Employees, 255 Ill. 213, 99 N. E. 389 (1912).

"call off" strikes already in progress.[1] The great majority of injunctions taken out after strikes have occurred, which represents the great majority of all injunctions, on the other hand, have contained no such provisions designed to cripple the strike. In fact, the content of the injunctions procured has generally been much the same whether the strike was lawful or unlawful, and there also are but few instances of the recovery of damages upon the theory that strikes were unlawful. While many kinds of strikes are illegal in many jurisdictions, such strikes seem to occur in these states quite as frequently as elsewhere.

d. Boycotts. The boycott was condemned as unlawful as early as 1886.[2] Many decisions have since confirmed this view. As the Supreme Court of the United States has said, the courts are nearly unanimous in condemning boycotting as wrongful.[3] In a few states it is specifically prohibited by statute.[4] The reasoning relied upon in condemning the boycott has generally been that it amounts to an effort to "coerce" third parties. Hence it falls within the category of conspiracies. In some cases an effort is made to distinguish the primary boycott from the secondary boycott, the latter being the boycott of a third party, usually a merchant who sells the product of the employer primarily boycotted. Many courts in fact use the term "boycott" as embracing only secondary boycotts. This distinction in practice amounts to little. Few employers of labor sell directly to the consumers. Hence, there can be but few primary boycotts. To boycott a manufacturer, pressure must usually be brought to bear upon the dealers who handle his products. This introduces the third

[1] The best known of such injunctions is the case of U. S. *v.* Hayes, in which, at the instance of the Attorney-general of the United States, Judge Anderson in November, 1919, directed the officers of the United Mine Workers to "call off" a nationwide strike of the bituminous coal miners. This direction was complied with, but the strikers did not return to work until they knew that at least part of the wage increases for which they were striking would be secured to them through the Bituminous Coal Mining Commission instituted by President Wilson to adjust this dispute.

[2] People *v.* Wilzig, 4 N. Y. Crim. 403 (1886); People *v.* Kostka, 4 N. Y. Crim. 429 (1886).

[3] Loewe *v.* Lawlor, 208 U. S. 274, 28 Sup. Ct. 301 (1908).

[4] See Harry W. Laidler, *Boycotts and the Labor Struggle,* 1913, pp. 174-177.

party and the element of the secondary boycott. It is significant that all of the statements holding primary boycotts legal are *"obiter dicta,"* or incidental remarks delivered in the course of a decision on some other point, and occur in cases in which the courts found an illegal secondary boycott.

In Arizona, California, and Montana,[1] the courts of final jurisdiction have held that boycotts, if conducted peaceably, are lawful. Though its supreme court has not spoken, this seems to be the law also in Oklahoma.[2] In New York, also, some inferior courts have sustained the boycott.[3] In Missouri, the legality of boycotting is doubtful, but it is established that the printing and distribution of boycott circulars may not be enjoined, the supreme court holding that such a prohibition violates the constitutional guarantees of free speech and free press.[4]

Though boycotting has for a long time been held illegal in most jurisdictions, it is only in recent years that organized labor has taken alarm at these decisions. Until 1908 boycotts were conducted openly and fearlessly. Sometimes injunctions were taken out against boycotts, but they only increased their effectiveness, through giving them wider publicity. The Danbury Hatters' case in 1908[5] first brought home to labor that damages might be collected for losses sustained through boycotts. The American Federation of Labor at once discontinued its "We Don't Patronize" list. In general, fewer

[1] Truax *v.* Bisbee Local, 19 Ariz. 379, 171 Pac. 121 (1918); Truax *v.* Corrigan, 20 Ariz. 7, 176 Pac. 570 (1918); Parkinson Co. *v.* Bldg. Trades Council, 154 Cal. 581, 98 Pac. 1027 (1908); Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909); Lindsay & Co. *v.* Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127 (1908); Empire Theatre Co. *v.* Cloke, 53 Mont. 183, 163 Pac. 107 (1917).

[2] Laidler, *Boycotts and the Labor Struggle*, p. 414.

[3] Sinsheimer *v.* Garment Workers, 59 N. Y. St. 503, 28 N. Y. Supp. 321 (1894); People *v.* Radt, 15 N. Y. Cr. 174, 71 N. Y. Supp. 846 (1900); Cohen *v.* Garment Workers, 35 Misc. 748, 72 N. Y. Supp. 341 (1901); Foster *v.* Retail Clerks, 39 Misc. 48, 78 N. Y. Supp. 860 (1902); Butterick Publishing Co. *v.* Typographical Union, 50 Misc. 1, 100 N. Y. Supp. 292 (1906). To contrary, Matthews *v.* Shankland, 25 Misc. 604, 56 N. Y. Supp. 123 (1898); Sun Printing and Publishing Association *v.* Delaney, 62 N. Y. Supp. 750 (1900); Mills *v.* U. S. Printing Co., 99 App. Div. 605, 91 N. Y. Supp. 185 (1904).

[4] Jeans Clothing Co. *v.* Watson, 168 Mo. 133, 67 S. W. 391 (1902); Lohse Patent Door Co. *v.* Fuelle, 215 Mo. 421, 114 S. W. 997 (1908); Hughes *v.* Motion Picture Operators, 282 Mo. 304, 221 S. W. 95 (1920).

[5] Loewe *v.* Lawlor, 208 U. S. 274, 28 Sup. Ct. 301 (1908).

boycotts were thereafter undertaken and they were conducted much less openly. There are still numerous local boycotts and some conducted upon a nationwide scale; but there can be no doubt that the attitude of the courts towards the boycott seriously restricts labor's use of this collective weapon.

e. Persuasion. Strikes cannot be effective when the employer is able to secure a sufficient number of new employees. Hence the strikers endeavor to prevent the employer from getting them. They may do this either through persuasion or through intimidation. All are agreed that intimidation is unlawful.

Persuasion, on the other hand, is generally lawful. An exception has always been recognized as to employees under unexpired contracts. It is a rule of the common law that an action lies against a third person who persuades another to break a contract of service without legal excuse. This rule has been quite often involved in cases in which the employees in question worked under contracts binding them to service for a definite period of time.[1] In some cases this rule has been applied even to employees whose contract was from day to day, on the theory that these employees would have continued at work but for the intermeddling of the third parties.[2]

A further extension of this common-law rule was made by the United States Supreme Court in the case of Hitchman Coal & Coke Co. *v.* Mitchell[3] in 1917. In this case it was held that injunction will lie against all attempts to organize employees who have signed a contract in which they agree that they will not join any labor union while they continue in employment. Such contracts are generally referred to in union circles as "yellow dog" contracts, and while by no means of recent origin were but little used until this decision of the United States Supreme Court. Even now such contracts are

[1] Haskins *v.* Royster, 70 N. C. 601 (1874); Bixby *v.* Dunlap, 56 N. H. 456 (1876); Beekman *v.* Marsters, 195 Mass. 205, 80 N. E. 817 (1907); Flaccus *v.* Smith, 199 Pa. 128, 48 Atl. 894 (1901); Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 50 S. E. 353 (1905).

[2] Walker *v.* Cronin, 107 Mass. 555 (1871); O'Neil *v.* Behanna, 182 Pa. 236, 37 Atl. 843 (1897); Frank *v.* Herold, 63 N. J. Eq. 443, 52 Atl. 152 (1901); George Jonas Glass Co. *v.* Glass Bottle Blowers, 77 N. J. Eq. 219, 79 Atl. 262 (1911); Southern R. Co. *v.* Machinists, 111 Fed. 49 (1901); Davis Machine Co. *v.* Robinson, 41 Misc. 329, 84 N. Y. Supp. 837 (1903).

[3] 245 U. S. 229, 38 Sup. Ct. 65 (1917).

the exception rather than the rule in non-union establishments. Their use has spread in recent years to such an extent, however, that considerable apprehension is felt in labor circles over "yellow dog" contracts. What will be the final outcome of this development cannot yet be predicted. There is considerable variance in the decisions of courts in different jurisdictions since the Hitchman case, upon exactly what is the doctrine of this case. Some interpretations would seem to outlaw all organization activities, if not all strikes, wherever the employer has made it a condition of employment that his employees shall not join the union.[1] In other cases a much narrower interpretation has been adopted and union activities permitted despite the fact that the employees involved were working under "yellow dog" contracts.[2] Beyond question, however, the Hitchman decision has created a situation which may become very serious in the next period of union expansion.

f. Picketing. The principal method by which strikers seek to "persuade" employees and prospective employees to join them is through stationing pickets near the employer's premise. Upon the legality of picketing the courts have been and, to a lesser degree, still are seriously divided. All agree that the conduct of pickets may be such as to render the picketing unlawful. Abusive language, threats, even though veiled, and an unreasonable number of pickets, constitute intimidation and are clearly unlawful. Some courts even hold that speaking to employees against their will is intimidation.[3] In other cases the offer to pay strike benefits or transportaton back to the place from which the new employees came has been considered bribery and an illegal method of picketing.[4]

[1] Callan *v.* Exposition Cotton Mills, 149 Ga. 119, 99 S. E. 300 (1919); O. J. Schafer *v.* Pattern Makers' League, Superior Court of Cincinnati, 2, *Law and Labor* 188 (1920).

[2] La France Electrical Construction & Supply Co. *v.* Electrical Workers, 108 Ohio 61, 140 N. E. 899 (1923); Piermont *v.* Schlesinger, 188 N. Y. Supp. 35 (1921); Lovinger & Schwartz Co. *v.* Joint Board, Ct. of Common Pleas, Cuyahoga Co. (Ohio), (1925).

[3] Frank *v.* Herold, 63 N. J. Eq. 443, 52 Atl. 152 (1901); Jersey Printing Co. *v.* Cassidy, 63 N. J. Eq. 759, 53 Atl. 230 (1902); Goldfield Mines Co. *v.* Miners' Union, 159 Fed. 500 (1908).

[4] Jersey Printing Co. *v.* Cassidy, 63 N. J. Eq. 759, 53 Atl. 230 (1902); Tunstall *v.* Steans Coal Co., 192 Fed. 808 (1911). To contrary, Levy *v.* Rosenstein, 66 N. Y. Supp. 101 (1900); Everett-Waddey Co. *v.* Typographical Union, 105 Va. 188, 53 S. E. 273 (1906).

The most serious disagreement, however, has arisen upon whether all picketing is illegal. On the one hand, it has been held that there is no such thing as "peaceful" picketing and that the establishment of a picket line is of itself intimidating and, hence, unlawful. It has been asserted, on the other hand, that peaceful picketing is not a mere fiction and that there is no warrant in law for enjoining all picketing. Prior to 1921, the view that all picketing is unlawful was held by the supreme courts of California, Illinois, Massachusetts, Michigan, New Jersey, Pennsylvania, and Washington, and by many federal courts;[1] while in Alabama, Colorado, and Washington all picketing was forbidden by statute, and in some cities by municipal ordinances.[2] In a yet larger number of jurisdictions, however, it was recognized that picketing may be peaceful and, hence, lawful. This view was held in Arkansas, Arizona, Indiana, Minnesota, Missouri, Montana, New York, Ohio, Oklahoma, Oregon, and Wisconsin, and, again, by many federal courts.[3]

[1] Pierce *v.* Stablemen, 156 Cal. 70, 103 Pac. 324 (1909); *ex parte* Williams, 158 Cal. 550, 111 Pac. 1035 (1910) (but as to California see, also, Southern California Iron & Steel Co. *v.* Iron & Steel Workers, 186 Cal. 604, 200 Pac. 1 (1921) which may be construed as modifying the earlier decisions cited); Franklin Union *v.* People, 220 Ill. 355, 77 N. E. 176 (1906); Boston Store *v.* Retail Clerks, 216 Ill. App. 428 (1920); Vegelahn *v.* Guntner, 167 Mass. 92, 44 N. E. 1077 (1896); *In re* Langell, 178 Mich. 305, 144 N. W. 841 (1914); Glass Co. *v.* Glass Blowers, 77 N. J. Eq. 219, 79 Atl. 262 (1911); Keuffel & Esser *v.* Machinists, 93 N. J. Eq. 429, 116 Atl. 9 (1922); O'Neil *v.* Behanna, 182 Pa. 236, 37 Atl. 843 (1897); St. Germain *v.* Bakery Workers, 97 Wash. 282, 166 Pac. 665 (1917); Otis Steel Co. *v.* Molders, 110 Fed. 698 (1901); Kolley *v.* Robinson, 109 C. C. A. 247, 187 Fed. 415 (1911); Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., 263 Fed. 192 (1920).

[2] Haskins *v.* Royster, 70 N. C. 601 (1874); Bixby *v.* Dunlap, 56 N. H. 456 (1876); Beekman *v.* Marsters, 195 Mass. 205, 80 N. E. 817 (1907); Flaccus *v.* Smith, 199 Pa. 128, 48 Atl. 894 (1901); Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 50 S. E. 353 (1905); and the Indianapolis ordinance by the Indiana Supreme Court in Walters *v.* City of Indianapolis, 191 Ind. 671, 134 N. E. 482 (1922). For decisions holding anti-picketing ordinances to be unconstitutional, see *In re* Sweitzer, 13 Okla. Crim. 154, 162 Pac. 1134 (1917) and Hall *v.* Johnson, 87 Ore. 21, 169 Pac. 515 (1917).

[3] Local Union *v.* Stathakis, 135 Ark. 86, 205 S. W. 450 (1918); Truax *v.* Bisbee Local, 19 Ariz. 379, 171 Pac. 121 (1918); Shaughnessy *v.* Jordan, 184 Ind. 499, 111 N. E. 622 (1916); Steffes *v.* Motion Picture Operators, 136 Minn. 200, 161 N. W. 524 (1917); Hughes *v.* Motion Picture Operators, 282 Mo. 304, 221 S. W. 95 (1920); Empire Theatre Co. *v.* Cloke, 53 Mont. 183, 163 Pac. 107 (1917); Butterick Publishing Co.

In 1921 the United States Supreme Court delivered two opinions which, while they have not brought all courts into agreement, have yet had the effect of rendering more definite the law as to picketing. In the first of these cases, American Steel Foundries Co. *v.* Tri-City Central Trades' Council,[1] the court held all "picketing" to be unlawful, but, also, held that whether efforts strikers may make to persuade employees and prospective employees to join them are lawful, depends upon the circumstances and facts in each case, and in this particular case the court allowed the union to place one representative (picket) at each factory entrance to present the strikers' case peaceably. In the second case, Truax *v.* Corrigan,[2] the court held that mass picketing violates the constitutional guarantees of liberty and property and that no state can legalize such conduct.

Due to the unfortunate use of the term "picketing" in a narrower sense than this term is popularly used, the American Steel Foundries Company decision has been cited in some cases since as absolutely prohibiting the employment of any pickets in strikes. It is authority, rather for the proposition that peaceful picketing may be lawful, and that it is the duty of the court to examine all the facts in each case and determine and definitely prescribe what conduct is permissible under the particular circumstances presented. This is the interpretation which has been adopted in nearly all recent cases involving the law as to picketing. The courts still differ in their statements as to whether there is any such thing as "peaceful" picketing, but even the courts which hold that all "picketing" is unlawful usually permit one or more pickets. Similarly, the courts which hold that peaceful picketing is lawful, now generally follow the United States Supreme Court in definitely prescribing how the picketing shall be conducted. The disagreement over

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v. Typographical Union, 50 Misc. 1, 100 N. Y. Supp. 292 (1906); La France Electrical & Supply Co. *v.* Electrical Workers, 108 Ohio 61, 140 N. E. 809 (1923); *In re* Sweitzer, 13 Okla. Crim. 154, 162 Pac. 1134 (1917); Greenfield *v.* Central Labor Union, 104 Ore. 236, 192 Pac. 783 (1920); A. J. Monday Co. *v.* Automobile Workers, 171 Wis. 532, 177 N. W. 867 (1920); Allis Chalmers Co. *v.* Iron Molders, 166 Fed. 45 (1908).

[1] 257 U. S. 184, 42 Sup. Ct. 72.

[2] 257 U. S. 312, 42 Sup. Ct. 124.

whether all picketing is necessarily unlawful seems to have resolved itself into little more than the use of the term "picketing" in two different meanings. However widely the statements of the courts may differ, the conclusions are generally not far apart. In fact, in probably a majority of all injunctions issued since 1921, the same number of pickets have been allowed as in the American Steel Foundries Company case, namely, one at each factory entrance. In other cases, this precise number has not been treated as a fetish; but, more correctly interpreting the decision of the Supreme Court, the courts in these cases have examined the particular circumstances presented and have varied their orders accordingly, but always definitely prescribing both the number of the pickets permitted and the manner in which they must conduct themselves.

g. Summary. While the courts have practically never questioned the legality of labor unions, other than syndicalist organizations, their decisons have placed many restrictions upon the methods which the unions employ to secure and maintain collective bargaining with employers. Strikes, boycotts, picketing, and even persuasion have often been held illegal. This has not meant thus far that labor unions have been unable to function, but they have in numerous instances been seriously handicapped. The tendency, moreover, seems to be toward the gradual development of more effective methods to secure compliance with the law as laid down in the decisions of the courts. An increasing use seems to have been made in recent years of mandatory injunctions. Picketing has been restricted so as to destroy a great part of its effectiveness. The damage suit still holds promise of becoming a much more effective method of enforcing the law than the injunction, although labor is now less afraid of it than when it was first brought into prominence by the Danbury Hatters' decision. Finally, the "yellow dog" contract may well be developed to an extent where union organization and the conduct of strikes will become difficult, indeed. The restrictions upon the weapons which unions employ to gain their ends are very real and, if present tendencies continue, are very likely to become still more serious in the future.

(5) *Restrictions on Employers and Employees*

Do similar restrictions apply to employers? In theory, yes; in practice, no. While the workingmen's right to strike is restricted, the employers' right to discharge is absolute. In the last decades, many states have enacted statutes prohibiting employers from coercing workmen into surrendering their right to belong to labor unions through threatening them with discharge unless they comply with this demand. These statutes have uniformly been held unconstitutional, and the Supreme Court of the United States is among the courts holding this view.[1] The Supreme Court has also held that where workmen have signed an agreement to the effect that they will not belong to any labor union, all efforts made thereafter to induce them to join a union are illegal.[2] These decisions have made it unquestionably lawful for an employer to maintain a shop closed to all union workmen. With these decisions must be contrasted those relating to the establishment of a closed shop through the effort of the union. It is true that it has often been stated that there is nothing unlawful about an agreement that only union men shall be employed, if the employer voluntarily enters into such an arrangement. The hub of the situation is that such contracts are usually not entered into voluntarily, but are gained through strikes. As has been noted, such strikes have often been condemned as an effort to injure non-unionists, or as amounting to coercion. Yet the Supreme Court has held that it is not "coercion" to threaten to discharge a workman unless he will renounce his union membership.[3]

The theory of the absolute right of the employer to discharge results also in the virtual legalization of the blacklist. Most of the states of the union have laws prohibiting blacklisting; but they have been dead letters. The explanation lies in the fact that employers may discharge or refuse to employ any workman who is an "agitator" or who belongs to a union. Anti-blacklist laws which merely prohibit the circulation of

[1] Adair *v.* United States, 208 U. S. 161, 28 Sup. Ct. 277 (1908); Coppage *v.* Kansas, 236 U. S. 1, 35 Sup. Ct. 240 (1915).

[2] Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 38 Sup. Ct. 65 (1917).

[3] Coppage *v.* Kansas, 236 U. S. 1, 35 Sup. Ct. 240 (1915).

information as to who are union members are probably constitutional, although one federal decision does not even grant that much.[1] He who circulates this information may be punished; but the employer who acts upon it is entirely within his rights. His reasons for refusing to employ or for discharging cannot be questioned in any court. In this day of the telephone, the telegraph, water-marked paper, and the card system, it is well-nigh impossible to prove who furnished the information upon which a blacklisted workman was discharged. Moreover, the supplying of such information by a former employer upon the request of the present employer is regarded as privileged. It is expressly declared legal in the anti-blacklist laws of many states. This is the simplest and most common manner in which an employer secures information about the "records" of his employees. A workman discharged for "union activity" as a result of information secured in this manner has no redress against either his employer or his former employer. If the information was supplied by an employers' association or furnished gratuitously by the former employer, the blacklisted workman cannot recover unless he proves who furnished the information and that he was discharged as a result thereof. He cannot establish either proposition unless the employer who discharged him is in sympathy with him.[2] This is not the case where the reason for the discharge was membership in a labor union. Blacklisting is legal throughout the United States to all intents and purposes.

That the blacklist is a powerful weapon in combating labor organizations cannot be questioned. To offset its effects, unions have often adopted the policy of giving employment as organizers to members who have been blacklisted. Nor is there any doubt that this weapon is extensively used. There is no industrial center in which there are not scores who claim to have been blacklisted. The boycott in many respects is the counterpart of the blacklist; but while blacklisting is prac-

[1] Boyer *v.* Western Union, 124 Fed. 246 (1903).

[2] This explains why workmen who were discharged upon the demand of employers' liability insurance companies have sometimes been able to recover from these companies.

tically unrestricted by the laws and the courts, labor's use of the boycott is very seriously interfered with.

In theory, the same principles are applied in reference to the activities of employers as to those of labor. The absolute right of employers to discharge is stated to be paralleled by the right of the workmen to quit for any or no reason. In all the cases in which the right to discharge was at issue, no element of combination was involved. Hence, it may be said that employers have not been freed from the conspiracy laws. The important fact is that in cases involving employers this question does not arise. Even when employers act in concert, the number of individuals involved is usually small, and the proof that there is a combination is difficult to obtain. Employers can effectively act together without giving much publicity to their combination because of their small numbers. In fact, in the case of the blacklist, its success depends upon secrecy. On the other hand, every collective action of labor must necessarily be public. A strike cannot take place without a meeting and a vote. The boycott depends for success upon publicity. The union must resort to the public rights of free speech, free press, and public assembly; but the employers' association succeeds through private correspondence. Again, it is evident that the collective activities of labor are much more likely to interfere with the rights of the public than are the acts of the employers. Pickets must use the streets, agitation may lead to violence, but the procuring of new employees is but an incident in the regular conduct of business. Another factor operating to give employers a real advantage is the difficulty of getting the question of the legality of their actions before the courts. The strike and the boycott may be questioned because they invade the rights of the employers to free access to the labor market and to the commodity market. But no right of the workingman is violated when he is discharged, or when a new man is given the job which he quit in order to go on strike.

(6) *Justification of True Collective Bargaining*

Viewing the situation from the point of view of the practical results, the conclusion is reached that the law to-day seriously restricts labor in its collective action, while it does not

interfere with the parallel weapons of the employers. Is this result socially desirable? Fundamentally, the question is whether collective bargaining by labor should be encouraged or discouraged. If collective bargaining is desirable, organized labor must be conceded the free use of the methods through which it can secure and maintain trade agreements. The right of organization is valueless unless it is accompanied by the right to make the organization effective.

The issue of the desirability of collective bargaining by labor is much confused by the parallel of the combination to control prices. Combinations to monopolize commodities are against public policy; why, then, should labor unions be favored in the law? This parallel overlooks the vital distinction between commodities and labor. The "commodity," labor, can never be divorced from the human being, the laborer. The labor contract is a bargain, not only for wages, but also for hours of labor, physical conditions of safety and health, risks of accident and disease. Labor cannot be placed upon the same plane with commodities, which are external and inhuman. It is in the interest of the public that the most favorable conditions of labor shall prevail. Since labor constitutes such a large part of the public, the general welfare depends intimately upon its advancement. While the public suffers from high prices, it benefits from high wages.

It is apparent that the individual laborer is at a great disadvantage in bargaining with an employer. The employer is often a great corporation, which is itself a combination of capital; but the disadvantage of the laborer is even more fundamental. Being propertyless, he has no opportunity to make his living but to work upon the property of others. Having no resources to fall back upon, he cannot wait until he can drive the most favorable bargain. It is a case of the necessities of the laborer pitted against the resources of the employer. It is only when labor bargains collectively that its bargaining power approximates equality with that of capital.

To treat labor unions as being in the same category with combinations to control prices is a misunderstanding of their functions. Labor unions are not business organizations, like corporations or partnerships. They have nothing to sell. When they enter into a trade agreement they do not obligate them-

selves to furnish a given number of laborers, or any laborers, at the terms agreed upon. They cannot do so, since they cannot compel their members to labor if these do not wish to work. The members of the union do not labor for the organization, but for themselves and their families. The difference between a labor union and a business organization, and between a trade agreement and an ordinary contract, is well expressed in a decision of the Supreme Court of Kentucky.[1] "A labor union, as such, engages in no business enterprise. It has not the power, and does not undertake to supply employers with workmen. It does not, and cannot, bind its members to a service for a definite, or any, period of time, or even to accept the wages and regulations which it might have induced an employer to adopt in the conduct of his business. Its function is to induce employers to establish usages in respect to wages and working conditions which are fair, reasonable, and humane, leaving to its members each to determine for himself whether or not and for what length of time he will contract with reference to such usages. . . . It [the trade agreement] is just what it, on its face, purports to be, and nothing more. It is merely a memorandum of the rates of pay and regulations governing, for the period designated, enginemen employed on the Chattanooga division of the company's railway. Having been signed by the appellee, it is evidence of its intention, in the conduct of its business with enginemen on said division, to be governed by the wages and rules, and for the time therein stipulated. Enginemen in, or entering, its service during the time limit contract with reference to it. There is on its face no consideration for its execution. It is therefore not a contract. It is not an offer, for none of its terms can be construed as a proposal. It comes squarely within the definition of usage as defined in Byrd *v.* Beall, 150 Ala. 122, 43 So. 749. There the court, in defining usage, said 'usage' refers to 'an established method of dealing, adopted in a particular place, or by those engaged in a particular vocation or trade, which acquires legal force, because people make contracts with reference to it.'"[2]

[1] Hudson *v.* Cincinnati, N. O. & T. P. R. Co., 152 Ky. 711, 154 S. W. 47 (1913).

[2] There are a large number of recent cases which, contrary to this decision, treat trade agreements as being contracts; but the view herein

That capital and labor should be treated equally is a proposition fundamental to American law. But the dual bargaining functions of capital must be distinguished. The *price bargain* is something very distinct from the *wage bargain*. The corporation deals with both; the laborer only with the wage bargain. *Manufacturers' associations* deal with the *price bargain; employers' associations* with the *wage bargain*. Trade unions do not deal with consumers at all. Their function is to offset the advantage the employer enjoys in bargaining about wages with the individual laborer. Equal protection of the law does not consist in treating a trade union like a *manufacturers' association,* but in treating it like an *employers' association.* This is not class legislation, but sound classification.

Unions of labor are just as likely to abuse their power as are unions of manufacturers. No organization can be trusted with unlimited power. In the case of the price bargain, the public has been compelled to enact railroad commission laws, in order to keep down the prices charged by corporations. Is there similar reason for public interference in the case of the wage bargain? Trade unions have hitherto been treated as organizations for private purposes.[1] Should they be subjected to public regulation, as have been the monopolistic combinations?

There is a better safeguard than public regulation against the abuse of power by trade unions. This is the power of the employers to resist such demands. Herein lies the *raison d'être* of the employers' association. It is to the interest of the public, not only that labor shall be free to bargain collectively, but that the employers should also be allowed to combine. Without organization upon both sides, there is only one-sided or *pseudo-collective* bargaining. When a corporation deals with individual consumers or individual wage-earners, all the advantages of combination are on one side. Similarly, *pseudo-collective* is the bargaining maintained by the so-called "open-shop" organizations of employers. Each wage-earner is compelled to accept the bargain which the association requires its

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expressed seems to state the better rule. Even where trade agreements are treated as contracts, it is but seldom that either side can effectively enforce such agreements through legal actions.

[1] See Coppage *v.* Kansas, 236 U. S. 1, 35 Sup. Ct. 240 (1915).

members to demand when hiring a laborer. Labor unions also practice one-sided collective bargaining when they compel employers as individuals to "sign up" the agreements they offer. They use the power of their combination to prevent the employers from acting collectively. The labor union which refuses to recognize the employers' association is setting up a pretense of collective bargaining similar to the pretense of the employers' association when it proclaims, under the name of the "open shop," that it is entirely willing to employ union men but refuses to confer with the union. It is the usual outcome of such practices, in these one-sided bargains for the union, to insist on the closed shop against non-unionists, and for the employers under the name of "open shop" to run a non-union shop. Theoretical principles of freedom are proclaimed to gain popular or legal support; but, in actual practice, each side when possessed of unlimited power rides rough-shod over the rights of others.

Real collective bargaining is something very different. It is premised upon organization on both sides. This requires getting together in a joint conference, and, through representatives, making a *trade agreement* binding upon individuals on both sides. A compromise between the extreme positions is the result. While it is in force, a trade agreement is the supreme law of the industry. It may even override the constitutions and the by-laws of the two associations. Dictation is autocracy; conference is democracy. Trade agreements are likely to be tolerably satisfactory to both sides, as both have had a voice in framing them. In real collective bargaining also lies the protection of the public. It means fair conditions for labor, and yet conditions under which industry can operate. It is an assurance of a minimum of industrial disturbance.

Restrictions in the law upon collective action upon either side are inconsistent with collective bargaining. Complete freedom to combine should be given to both employers and employees.

(7) *Responsibility for Unlawful Acts*

Complete freedom to combine carries with it not only the legality of both the trade union and the employers' association but of all peaceful forms of collective action. These include

the strike, the lockout, the boycott, the blacklist, the union shop, the non-union shop, and peaceful persuasion and peaceful picketing.

Resort to violence by either side, however, cannot be sanctioned. In this regard the present situation in the United States might well be described as anomalous. Nowhere, except in countries which have adopted compulsory arbitration, does the law place so many restrictions upon collective action as in the United States. Nowhere, however, is violence so prevalent in labor disputes, or goes more frequently unpunished. Better enforcement of law and order is a vital need in this country.

The problem of more effectually preventing violence is not a simple one. Judging by results, our method of relying upon the courts to preserve law and order through injunctions may well be put down as a failure. The preservation of law and order is essentially an executive, not a judicial, function; and recognition of this fact will accomplish more toward checking violence than the most drastic restrictions upon collective action. If we are to have law enforcement, the executive officers must be held responsible therefor, and public opinion must support them when they do their duty. Intimidation and violence are never justified, whether it is the employers or the strikers who resort to such means to gain their ends. He who is guilty thereof should be punished, regardless of the provocation. Only when such an attitude is taken by employers, employees, and the general public, are we likely to eliminate the violence which disgraces so many labor disputes in this country.

A more debatable question arises as to the extent to which labor unions and employers' associations should be held responsible for unlawful acts committed during labor disputes. What the law now is upon this point has been made clear through decisions of the United States Supreme Court in the cases of Loewe *v.* Lawlor[1] and Coronado Coal Co. *v.* United Mine Workers.[2] The first of these cases was the Danbury Hatters' case already referred to, in which 175 members of the hatters' union were held liable for nearly $300,000 damages

[1] Loewe *v.* Lawlor, 208 U. S. 274, 28 Sup. Ct. 301 (1908); 235 U. S. 522, 35 Sup. Ct. 170 (1915).

[2] United Mine Workers *v.* Coronado Coal Co., 259 U. S. 344, 42 Sup. Ct. 570 (1922); Coronado Coal Co. *v.* United Mine Workers, 268 U. S. 295, 45 Sup. Ct. 551 (1925).

(including interest) sustained through a boycott conducted by the union, in which but few of these individuals had any active part. The second is another suit for damages under the Sherman Anti-Trust Act growing out of the destruction of mining property in Arkansas by a mob during a strike, which has been in the courts since 1914 and must now (February, 1926) be retried, although at one stage a judgment was secured by the plaintiff for $600,000 damages, plus interest, costs, and attorneys' fees. The defendants in this case originally included, besides individuals who are charged with having been direct participants in the unlawful acts, the international organization of the United Mine Workers and its District No. 21. Decisions of the United States Supreme Court have absolved the international union but have established the responsibility of District No. 21, which embraces all the union miners in the three states of Arkansas, Oklahoma, and Texas.

These decisions have established that labor unions and their individual members are responsible, *without limit,* for all unlawful actions of the union officers and agents which they have in any manner authorized or sanctioned. Such antecedent authorization or subsequent approval of unlawful acts does not have to be expressed, but may be inferred from all the facts in the situation. Continued membership in the union, after publicity has been given to unlawful acts done in its behalf, is of itself sufficient to constitute approval thereof.

Once liability is established against a union, none of its funds is exempt from seizure. With liability of the union, also, goes liability of all members of the union. Unions being unincorporated associations are, as far as responsibility for torts is concerned, much like partnerships. Each member is individually liable for judgments against the union[1] and may be sued directly for its tortious acts, which he authorized or approved. What this means is best made clear by contrasting the position of the members of labor unions with that of stockholders in corporations. Unquestionably, labor unions are much looser organizations than corporations. Unions must entrust their officers with great power; the rank and file of the members know little about what the officers are doing. Even when members disapprove of the action of the officers, they can ill

[1] F. R. Patch Mfg. Co. *v.* Capeless, 79 Vt. 1, 63 Atl. 938 (1906).

afford to get out of the union, as they would lose their insurance benefits and in many industries would find it difficult to get a job. These are reasons why the members of labor unions should not be held to the same accountability as stockholders in corporations. In fact, however, they have the greater liability. In the case of a tort committed on behalf of a corporation, the stockholders can be held only to the extent of their stock subscription, or double the amount, in case of banks and similar corporations. In contrast, the responsibility of each member of a labor union is unlimited for tortious acts in his behalf, except for the personal exemptions allowed him by statute.

The two leading cases in which these principles of liability were established were both actions under the Sherman Anti-Trust Act, but they do not rest upon this act. Under the anti-trust laws, treble damages may be recovered, while ordinarily but single damages are recoverable. Aside from this feature, however, the menace of the damage suit in no manner depends upon the anti-trust laws. The principles of liability discussed above—which represent merely the application of the ordinary principles of the law of agency to labor disputes—carry with them possibilities for completely destroying the labor unions. It is often contended that labor unions should be made financially responsible for unlawful conduct of their officers and agents. Beyond question such responsibility already exists. Whether the unlawful conduct is an illegal strike, a boycott, picketing or violence, neither the union funds nor the accumulations of individual union members are safe from seizure. There are difficulties in some jurisdictions in getting unions into court, and most unions have only small funds that can be seized, and most union members have but little property not exempt from execution. These factors are likely to render damage suits as disappointing as injunctions have often proved, but with the law of agency as it stands to-day no one can be sure that labor unions and their members are not going to be mulcted for damages in very great sums. Ever since the first decision of the Supreme Court in the Danbury Hatters' case in 1908, there have been pending in the courts numerous damage suits against labor unions or their members, in which literally millions have been claimed as damages. Com-

paratively few of these cases have resulted in any substantial judgments; but the situation is one of uncertainty and menace.

(8) *English Law of Labor Disputes*

Very nearly the same situation which has been created in the United States by the Danbury Hatters' case and the Arkansas Coal Miners' case existed in England from 1901 to 1906, as a result of the decision of the House of Lords in the Taff Vale case.[1] In that case a union of railway workers was assessed damages in excess of $200,000 on account of injury to the company through acts of violence during a strike. The upshot of this case was the enactment of the British Trade Disputes Act of 1906. This act places labor unions upon a position of equality with employers' associations, and distinguishes both from combinations to control prices. It provides that acts done by a combination, either of employers or employees, "in contemplation or furtherance of a trade dispute," shall be lawful unless they would be unlawful if done by one person. It provides further that such acts shall not be deemed unlawful because they interfere with another's free access to the labor and commodity markets, or because they amount to meddling by third parties with contractual rights. Thus, the law of conspiracy, in all its forms of statement, is declared not to be applicable to labor disputes. In lieu of vague prohibitions of "violence," "intimidation," and "coercion," moreover, England has definite statutory declarations as to the conduct which is unlawful. The dividing line between lawful persuasion and unlawful coercion is fairly definite, so that all who read may know. Picketing for the purpose of peacefully obtaining or communicating information, or of peacefully persuading another to work or abstain from working, is lawful. It is, on the other hand, unlawful to commit acts of violence or sabotage, or persistently to follow another. Nor may anyone quit work in violation of a contract when he has reason to know that the consequence of his leaving will be to endanger human life, or to expose valuable property to injury, or to deprive a city of gas or water.

In English law, there are no doubts as to the legality of labor unions or of employers' associations. Both the lockout

[1] 70 L. J. K. B., 905 (1901).

and the strike are legal, as are the boycott and the blacklist. Parallel to the right of employers to get new workmen is the right of the strikers to picket peacefully and to induce them to abstain from working. England's policy is to allow both sides a free hand for a fair fight. It ignores the motives which underlie labor disputes. It does not interfere until the line of intimidation and violence has been crossed. This is a line definitely established by statute, and not left wholly to the courts. Thus the English law has the merits of certainty and practicality.

The most radical departure in the British Trade Disputes Act must still be noted. It is the exemption of trade unions and employers' associations and their members from all liability in tort for wrongful acts alleged to have been committed in their behalf. This was Parliament's answer to the Taff Vale case. It made it impossible to maintain any damage suit against a trade union or an employers' association. This is a greater privilege than the limited liability of business corporations. The liability is not merely limited; it is removed *in toto*. Even though a union may be responsible for acts of violence, it cannot be sued for the damage it caused. Our courts hold the members of labor unions to the unlimited liability of partnerships; in England they are not liable at all.

The position given in England to trade unions and employers' associations violates that concept, fundamental in law, that he who is responsible for a wrong must answer therefor. An overwhelming majority of Parliament believed it sound policy to modify this principle to this extent. Prior to the Taff Vale case, damage suits were never brought in England against trade unions. Whatever may have been the law, they enjoyed exemption, to all practical purposes, from actions in tort. In the United States, also, labor unions until recently occupied much the same position, and this practical exemption of unions from responsibility in damages has led to no dire consequences. Exemption of trade unions and employers' associations from actions in tort does not mean that wrongs they commit are allowed to go unpunished. The union members who are guilty of acts of violence can be held therefor, both criminally and in tort; but the members who have not been direct participants in the wrongdoing can-

not be held civilly liable as principals. As a curb upon union violence, it is doubtless much more effective vigorously to prosecute those who commit the violence than to take away the property of entirely innocent union members.

The exceptional position given in English law to trade unions and employers' associations rests upon the proposition that collective bargaining is socially desirable. Trade unions are such loose organizations that a rigid application of the principles of agency law is unjust. Such a doctrine operates to destroy the unions. This is even more true in the United States than in England, since many of the acts of unions that are lawful there are unlawful here.

The law conceives of no responsibility other than financial responsibility, and of no check other than that furnished by the law. A more satisfactory check upon abuse of power by unions is the like power of employers. The protection of the public lies in the equal strength of both parties to make the wage bargain. To this end restrictions upon collective action upon either side should be removed. Thus can collective bargaining in the voluntary sense be maintained and extended.

2. Mediation by Government

The development of large-scale production and the growing complexity and interdependence of the social order have vastly increased the number and disastrousness of strikes and lockouts.[1] For settling differences and avoiding these far-reaching conflicts there have been devised four main methods: media-

[1] In the German Empire there were 10,484 strikes in the years 1899 to 1905, affecting 938,543 men, and 583 lockouts, affecting 207,800 men. In Austria there were 3,073 strikes affecting 572,746 men from 1894 to 1904, and 69 lockouts involving 43,395 men. In France, from 1890 to 1904, there were 7,741 strikes involving 1,865,620 men, and from 1900 to 1904, 7 lockouts involving 1,031 men. In Belgium there were 961 strikes affecting 274,654 men from 1896 to 1904. Italy had 3,852 strikes affecting 855,066 men from 1895 to 1903. In Great Britain and Ireland there were 6,030 strikes and lockouts affecting 1,783,889 men from 1895 to 1905 (Maximilian Meyer, *Statistik der Streiks und Aussperrungen*, 1907, pp. 43, 45, 71, 78, 107, 116, 133, 154, 158, 184). From 1881 to 1905 there were in the United States 36,757 strikes involving approximately 8,703,824 employees, and 1,546 lockouts affecting 825,610 employees (Commissioner of Labor, *Twenty-first Annual Report*, 1906, pp. 476, 477, 736, 737).

tion or conciliation, voluntary arbitration, compulsory investigation, and compulsory arbitration.

(1) *Definition of Terms*

By *mediation* or *conciliation* is usually meant the bringing together of employers and employees for a peaceable settlement of their differences by discussion and negotiation. The mediator may be either a private or an official individual or board, and may make inquiries without compulsory powers, trying to induce the two parties by mutual concessions to effect a settlement. The successful mediator never takes sides and never commits himself as to the merits of a dispute. He acts purely as a go-between, seeking to ascertain, in confidence, the most that one party will give and the least that the other will take without entering on either a lockout or a strike. If he succeeds in this, he is really discovering the bargaining power of both sides and bringing them to the point where they would be if they made an agreement without him. Where the difficulty is due to the parties not having thoroughly discussed the situation together, the mediator is often able to bring them into joint conference, and, in practice, most of the settlements have been arranged through compromise. In other cases the parties are unwilling to admit to each other the utmost concession they will make, fearing to weaken their position. In such cases a mediator whom both sides can trust can render invaluable service as an intermediary. Occasionally parties refuse to treat with each other, but will consent to make each a separate settlement with the mediator. Finally, mediators, through their familiarity with methods for dealing with analogous difficulties in different trades, are sometimes able to suggest a solution. In all cases the mediator is merely a confidential adviser. Even when he is a state authority he does not exercise any of the compulsory powers of the state, and if he even endeavors, by public investigations and recommendations, to bring public opinion to bear upon the disputants, he disqualifies himself for further mediation.

Voluntary arbitration occurs when the two parties, unable to settle the controversy by themselves or with the assistance of a mediator, agree to submit the points at issue to an umpire or arbitrator, by whose decision they promise to abide. The

complete procedure of arbitration consists of a number of steps: (1) the submission of the dispute to the decision of a third party; (2) submission to an investigation; (3) refraining from strike or lockout pending investigation; (4) drawing up an award; (5) enforcement of the award and refraining from strike or lockout during its life. Arbitration remains strictly voluntary even if at every step except the first the state uses its compulsory power. The essential thing is that *both* parties consent in advance to calling in the powers of government. Hence, it is not inconsistent with the idea of voluntary arbitration for the state to use its power of compelling testimony, or even of enforcing an award, provided both sides have previously agreed that this be done.

Under the system of *compulsory investigation,* a board created by the state summons witnesses and takes testimony on the initiative of one party to the dispute without the consent of the other, or upon its own initiative without the consent of either. The board is one of investigation and recommendation, without legal power to enforce its awards. Compulsory investigation is sometimes accompanied by prohibition of strikes or lockouts pending the completion of the investigation and the publication of the recommendations. This compulsory postponement is the characteristic feature of the Canadian Industrial Disputes Investigation Act of 1907, copied by Colorado in 1915, designed to prevent sudden strikes or lockouts.[1] It is not essential to compulsory investigation. The alternative is compulsory investigation without the prohibition of strikes and lockouts, and this is provided for in the laws of several American states.[2] These laws are generally thought to establish voluntary systems of mediation, but they go beyond that point when they take testimony without the consent of either side.

Compulsory arbitration consists in the government's directly or indirectly compelling employers and employees to submit their disputes to an outside agency for decision. In a complete system of compulsory arbitration, government coercion is exercised at all five of the steps previously mentioned. Differences *must* be submitted to arbitration; witnesses *must* testify and

[1] See "Coercion by Government," p. 161.
[2] See "United States," p. 147.

produce papers; the parties *must* refrain from strike or lockout during the investigation; the board *must* reach a decision and announce an award; the parties *must* observe the award and refrain from strike or lockout during its life. The penalties for violation are fine and imprisonment, not, however, imposed on a workman for ordinarily quitting work or on an employer for the ordinary discharge of a workman, but for quitting or discharging collectively or with intent to obstruct any of the steps essential to the arbitration.

(*2*) *Foreign Countries*

Voluntary arbitration attained its most characteristic development in England. Sir Rupert Kettle, one of the founders of the English system, wrote: "It is agreed that according to the spirit of our laws and the freedom of our people, any procedure, to be popular, must be accepted voluntarily by both contending parties,"[1] and the whole history of conciliation and arbitration in England verifies his assertion. In the early years of the nineteenth century the effects of the Industrial Revolution, the repeal of the Conspiracy Laws in 1824 permitting the organization of many new unions, and the Panic of 1828 with the ensuing years of depression, united to bring about a series of violent strikes and lockouts. These early collective disputes were envenomed by mistaken legislation to control the workmen, and the memory of the period embittered the relations of masters and workmen for years. Gradually, however, both sides began to see the futility of these destructive methods, and the idea of avoidance or peaceful settlement of trade disputes by means of joint boards of employers and employees took root. One of the very earliest of these boards was established for the Macclesfield silk trade in 1849, and was suggested by the French industrial courts (*conseils de prud'hommes*).[2] It proved a failure. In 1856 and 1860 committees of the House of Commons found the men favorable to arbitration, but the employers opposed to state intervention. The year 1860, in which A. J. Mundella established the first

[1] Jos. D. Weeks, "Report on the Practical Operations of Arbitration and Conciliation in the Settlement of Differences between Employers and Employees in England," Pennsylvania Doc. 1878-1879, *Legislative Documents*, Vol. II, No. 8.

[2] See "Industrial Courts," p. 92.

permanent board of conciliation and arbitration, marks the real beginning of the movement for conciliation, and between 1867 and 1875 countless boards were established without legislation.

It was not until 1896 that Parliament enacted legislation dealing solely with collective disputes. The act of 1824[1] applied only to individual disputes, and the act of 1867[2] attempted to introduce the French industrial courts. The act of 1872[3] provided for conciliation boards, but was a dead letter. In 1893 occurred the disastrous coal-mine strike in which finally the government intervened and arranged a conciliation board similar to those which had been so widely organized without government interference. Following this came the Conciliation Act of 1896. It repealed the acts of 1824, 1867, and 1872. It entrusted to the board of trade[4] certain powers of mediation. The board might (1) register any private conciliation or arbitration board on application. This conferred no additional powers on these boards. (2) If the means of conciliation in a district were inadequate, the board of trade might appoint mediators to confer with the parties as to the formation of conciliation boards. (3) In case of an industrial dispute, the board of trade might (*a*) make an inquiry, (*b*) bring the parties together, (*c*) on the application of one party appoint one or more conciliators, (*d*) on the application of both parties appoint an arbitrator. All expenses were paid by the government.

Since the passage of the act, two additions were made to the conciliation machinery of the board of trade before the war, neither of which necessitated further legislation. In 1908, the president of the board sent a memorandum to the chambers of commerce and employers' and workmen's associations, stating that the scale of operations of the board under the Conciliation Act required more formal and permanent machinery, and announcing the creation of a standing court of arbitration. Three panels were to be appointed by the board, the first com-

[1] 5 Geo. 4, C. 96.
[2] 30-31 Vict., C. 105.
[3] 35-36 Vict., C. 46.
[4] At that time similar to the United States Departments of the Interior, Commerce, and Labor. Its labor functions were in 1916 transferred to the newly created ministry of labor.

prising "persons of eminence and impartiality" from whom the chairman should be chosen, the second employers, and the third workmen. In case of a request for the services of the court, it should be nominated by the board of trade from these panels, either selected by them or jointly selected by the parties, and should consist of either one or two representatives of each side, and a chairman, who should have a vote. In addition, technical assessors or experts might be appointed by the board to assist the court. The members of the court would thus be unconnected with the particular dispute, but representative of the respective classes. In 1909 the Forty-second Trades Union Congress adopted a resolution that the congress should elect the members of the workmen's panel, to guard against political influence, but the board of trade denied the request on the ground that "public confidence in the impartiality of the tribunal" was better served by the existing arrangement.

The court of arbitration proving a failure, an industrial council, similar to that requested by the Trades Union Congress in 1909, was created in 1911. It consisted of "representatives of the two great sides of the industry of the country." The chairman of the industrial council is called "chief industrial commissioner." The reasons for the creation of the council were the desirability of a national representative body, and the fact that the president of the board of trade is necessarily a politician. The council deals with cases referred to it for its opinion upon the facts only; with cases referred to it for inquiry and recommendations, to be made public, or accepted, if so agreed upon; with cases referred by the board of trade or the government; and with general matters referred by the board for a representative opinion.

Registration of conciliation boards has been far from complete, but most unregistered boards furnished the board of trade with annual returns regularly until the war. The first report of the board of trade recorded one attempt to establish a board where none existed, but the later reports contain no such information. Evidently that feature of the act has become a dead letter. In the settlement of disputes the board of trade has been more successful. From 1896 to 1913, 696 cases were dealt with, of which 345 involved a stoppage of work and 351 involved no stoppage. About 65 per cent of the total cases

occurred in the last six years of the period covered by this report, the highest number recorded being for 1913.[1] Reports during the war were irregular. Conciliation and arbitration of railway disputes have been under an agreement secured through the board of trade in 1907. This agreement broke down in 1911 with a strike on every railway except one. It was then revised, so that a central chairman or arbitrator might be chosen from a panel prepared by the board of trade. On protest of the unions, this revised agreement was to have lapsed in 1914, and further revision was postponed until after the war.

Thus, prior to the war, legislation concerning arbitration and conciliation in Great Britain was entirely permissive and voluntary. Employers as a class favored negotiation through the voluntary conciliation boards, but many of them condemned the interference of the state, partly on the ground that it assumed no responsibility for enforcing its award, and partly on the ground that the arbitrator is likely to have no practical knowledge of the trade.

English trade unions have from the first favored conciliation and voluntary arbitration, but they are opposed to compulsory arbitration. Several efforts have been made in the trades union congress to secure indorsement of compulsory arbitration, all of which have been defeated by large and increasing majorities. In 1908 a resolution was introduced requesting Parliament to amend the Conciliation Act of 1896 so as to give the board of trade powers of compulsory investigation on request of either party, no stoppage of work to take place pending inquiry and report. It was defeated by a large majority at that time and again in 1909.

The exigencies of the war eventually influenced a reversal of the government's conciliation policy. During the first year of the war, the "industrial truce" of August, 1914, and the "treasury agreement" of March, 1915, evidenced the patriotic desire of union leaders to avoid all stoppages of work. At first a marked success was attained. The increasing living costs and war profiteering, however, renewed dissatisfaction among the workers, and weakened the government's confidence in the

[1] Eleventh Report by the Board of Trade of *Proceedings under Conciliation Act of 1896.*

efficacy of existing arbitration and conciliation machinery to care for the situation. The Defense of the Realm Act of 1914, with subsequent amendments, made a criminal offense of instigation of a strike in certain industries. The Munitions of War Act of July, 1915, made a punishable offense of a strike or lockout, and even of individual cessation of work without permission. As first promulgated, the act established "controlled industries," in which it was illegal to engage in a lockout or strike without first submitting grievances to the proper tribunals and awaiting the decision for at least one month from date of submission of grievances. No worker in "controlled industries" was allowed to quit his employer without obtaining a dismissal certificate under penalty of enforced unemployment for six weeks. "Controlled industries" being those directly or indirectly concerned in the manufacture of munitions, it was apparent that under pressure of war the government was brought to a strict regulation of comparatively all phases of industrial disputes.

The arbitration structure built up under the Munitions Act was distinctly a government affair. General and local munitions tribunals were provided, each to consist of a chairman appointed by the government, and if necessary from two to four "assessors" selected from panels of employers and employees appointed by the government. Only the more serious differences were referred to the general tribunals; failing settlement, they were carried to the "committee of production," which antedated the ministry of munitions by several months. Later a special tribunal to deal with women's wages was authorized. Later also permission was granted a disputant to appeal from a munitions tribunal to a high court judge.

Despite the Munitions Act strikes increased, particularly large strikes. The Welsh coal strikes of July and August, 1915, and the engineering disputes of March and April, 1916, were in effect protests against the government policy. In the engineering disputes the shop stewards' movement emerged as a serious factor, and the government invoked the Defense of the Realm Act to arrest the ringleaders. In the coal strike all the existing agencies of arbitration and conciliation, including the board of trade, intervened without success; the dispute was not settled until the prime minister had granted labor's demands.

Miners' outbreaks throughout the year led to government control of the mines in December. The government did not inflict on the miners the penalties prescribed under the munitions of war acts. The total number of cases heard before munitions tribunals from their inception of July 1, 1916, was 5,354, involving 16,930 defendants and resulting in 11,794 convictions. Of the complaints against workpeople there were 34 strike prosecutions and 599 out of 1,023 defendants were convicted. Approximately 75 per cent of the defendants in breaches of rules cases were convicted. No lockout complaints were recorded against employers, but 71 of the 115 defendants on the charge of illegal employment of workmen were convicted. From December, 1915, to July 1916, 3,225 of the 12,188 applications for dismissal certificates were granted.[1] The minister of munitions reported in 1916 that up to that time only about one-fifth of 1 per cent of strikers were prosecuted. In November, 1918, it was estimated that the munitions of war acts had at that time operated during 75 per cent of the war period, but 85 per cent of the total time lost by strikes during the war occurred in that interval.[2]

The third year of the war brought a partial confession of defeat from the government in the enactment of the amendment of August, 1917, to the munitions act. In June, 1917, the engineering strike had registered labor's strong disapproval of the introduction of dilution of labor in private engineering work. Strike leaders were arrested but later released without prosecution after the prime minister had intervened to force a settlement. A commission of inquiry into industrial unrest, appointed in June, reported one month later, urging especially repeal of the dismissal-certificate regulations and reform of procedure under munitions tribunals. In October, 1917, the government abolished the leaving-certificate regulations.

In 1917 the government, through a subcommittee of the ministry of reconstruction, the "Whitley committee," considered means of securing a "permanent improvement in the relations between employers and workmen." The Whitley committee made five reports, proposing collective bargaining through a

[1] British Parliament Report, *Return of Cases Heard before Munitions Tribunals up to July 1, 1916*, Cd. 8360.

[2] Milton Moses, "Compulsory Arbitration in Great Britain during the War," *Journal of Political Economy*, November, 1918, pp. 882-900.

system of national and district industrial councils and works committees, representing equally organizations of employers and employees.[1] In the semiorganized and unorganized industries the substitution or close supervision of industrial councils by the minimum wage trade boards, under the Trade Boards Act of 1909, was urged. The exact determination of the functions of industrial councils was left to the employers and workers concerned. It was the opinion of the Whitley committee that the councils should disclaim interference with the existing machinery of conciliation boards. A suggested remedy for the lack of coordinated conciliation policy was the formation of a standing arbitration council on the lines of the "committee of production," one task of which should be the fullest publicity of the decisions of the single arbitrators. The Whitley committee went on record as opposing compulsory arbitration and the enforcement of awards or agreements by monetary penalties; for such procedure was "not desired and not effective."

Objections to the Whitley report were freely expressed by the government, employers, and workers. The government demurred at the trade boards' assisting the formation of industrial councils, the boards being organized for an entirely different purpose. The associations of employers indicated that the Whitley scheme would continue on a large basis the conflict between labor and capital, and that it meant a continuance of state control. Labor organizations feared that the outcome would be compulsory arbitration, disapproved of the exclusion of technical men from the councils, and stated that the industrial councils might combine to raise wages and costs of production, placing the burden on the consumer. Notwithstanding objections, the government encouraged the scheme. By January 1, 1919, twenty industrial councils covering a number of industries with an aggregate payroll of 1,500,000 workers had been set up. By the end of the year the number of councils had increased to fifty-one and the aggregate of workers affected to 3,300,000. Furthermore, interim industrial reconstruction committees had been formed in twenty-four industries. These were recommended by the Whitley committee for

[1] British Parliament Report, *Interim Report of Subcommittee of Ministry of Reconstruction on Joint Industrial Councils*, March, 1917, Cd. 8606.

industries not highly organized. But few of the well-organized industries took up the Whitley proposals. This was especially true of mining, iron and steel, cotton and railroads. By May, 1920, some forty-six national wage agreements had been concluded by the joint industrial councils. There have been few developments of importance, however, since 1920, and the number of workers covered by the councils declined slightly to 3,000,000 by 1924.

From 1918 to 1921, seventy-three councils were formed of which fourteen have ceased to function. Thirty-three interim industrial reconstruction committees were formed from 1918 to 1919 of which fourteen were reconstituted as joint industrial councils and eleven ceased to function. From 1921 to 1926 no new organizations of either type were established.[1]

In reviewing the course of arbitration during the period of the war in Great Britain, it is important to bear in mind that patriotism was an immeasurable factor in the attitude of workers toward arbitration. In the last full year before the war, 1,497 disputes were reported. Under the Conciliation Act of 1896, twenty-seven strikes or lockouts were settled by conciliation or arbitration in 1913, and forty-four cases were settled without stoppage of work.[2] A marked decrease in the number of disputes was apparent at the beginning of the war. The total disputes for 1915 and 1916 do not equal the figure for the single year of 1913. How much of this decrease can be laid to the principles of compulsory arbitration under the munitions of war acts, and how much to the patriotic impulse of the workers, is difficult to determine. It is significant, however, that the lowest point in industrial unrest during the war was the period from August, 1914, to August, 1915, when voluntary cooperation on the part of the workers was the only compelling bond. Of further significance is the sudden doubling of the number of recorded trade disputes in 1918 over 1917.

Two conclusions emerge from British war experience with

[1] *Labour Year Book*, 1924, pp. 50-52; 1925, pp. 96-97. Issued by the General Council of Trades Union Congress and the National Executive Labor Party.

[2] British Parliament Reports, 1914-1916, Vol. XXXVI, *Report on Strikes and Lockouts and on Conciliation and Arbitration Boards*, 1913, p. 98, Cd. 7658.

compulsory arbitration. One is that the composing of industrial differences is the business only of the two parties to a dispute. The mere existence of laws and machinery did not diminish tie-ups in industry. The larger and more important the strike, the more complete was the breakdown of existing machinery, and the more often the government had to interpose to settle differences. The acceptance of the Whitley report tacitly recognizes that the compulsory introduction of third parties to a dispute was "not desired and not effective." The second conclusion is that the most effective means of conciliation is the worker's conviction that he is a responsible factor in the management and control of industry. Something of this conviction was apparent in the railway strike of September, 1919, when a committee of transport workers mediated, apparently with success, between the government and its striking railway employees, thereby ending a nationwide tie-up. But the Whitley report and recent trade agreements are the most tangible evidence of the increased responsibility given workers in controlling industry. As a means of conciliation and as a preventive of open disputes, the new responsibility seems a fruitful advance.

In Britain's unorganized and poorly organized industries, Parliament, by the trade boards acts of 1909 and 1918, has empowered the Minister of Labor to set up trade boards to determine minimum wage rates. When the findings of these trade boards have been confirmed by the Minister of Labor they become compulsory. In the industries reasonably well organized on both sides there have been formed a number of Whitley councils which have been already described. The best-organized industries, such as cotton manufacture, coal mining, engineering, and railways, have developed their own machinery for the adjustment of their disputes independently of the government.

In addition to these three systems there is the Industrial Courts Act of 1919 which provides a ready means of conciliation and arbitration when the machinery of any industry proves unequal to the occasion. This act sets up a permanent court of arbitration called the industrial court. Under the act, the Minister of Labor may, if both parties consent, refer a dispute to the industrial court; or to the arbitration of one or more

persons appointed by him, or to the board of arbitration consisting of one or more persons nominated by, or on behalf of, the employers concerned; and an equal number of persons nominated by, or on behalf of, the workers; and an independent chairman nominated by the minister. The industrial court was set up in December, 1919, and normally sits in London but makes arrangements, when necessary, to hear cases in Glasgow, Newcastle, Manchester, Cardiff, and other important centers.

If either or both parties desire it, the minister may appoint a court of inquiry, which after investigation renders a report to the House of Commons. Further, the minister may cause such an investigation to be made without the request of either party. The reports and recommendations of a court of inquiry present the case as the general public might reasonably be expected to view it and they naturally affect the trend of public sympathy.[1]

Legislation providing for mediation or conciliation and for voluntary arbitration is found also in France, Germany, Austria, Denmark, Italy, Sweden, Belgium, Roumania, Servia, Spain, the Netherlands, Switzerland, and Argentina.[2]

(3) *United States*

a. State Legislation. A majority of the states have legislation providing for the settlement of industrial disputes, and Wyoming has a constitutional provision to the same effect.[3] Many of these states have permanent boards called boards of conciliation and arbitration or some similar title, with from two to six members, although three is the usual number. It is pro-

[1] International Labor Office; *International Labour Review,* March, 1921, pp. 105-110; July-August, 1921, pp. 41-50. Department of Labor Canada, *Labour Gazette,* September, 1925, pp. 874-875.

[2] See United States Bureau of Labor, *Bulletin No. 60,* September, 1905, "Government Industrial Arbitration," L. W. Hatch; *Bulletin of the International Labor Office,* 1906-1918; United States Bureau of Labor, *Bulletin No. 98,* January, 1912, "Industrial Courts," H. L. Sumner (for Germany).

[3] See United States Bureau of Labor Statistics, *Bulletins No. 148,* 1914, "Labor Laws of the United States"; *No. 166,* 1915, "Labor Legislation of 1914"; *No. 186,* 1915, "Labor Legislation of 1915"; *No. 213,* 1917, "Labor Legislation of 1916"; *No. 244,* 1918, "Labor Legislation of 1917"; *No. 257,* 1919, "Labor Legislation of 1918," and more recent annual summaries in the *American Labor Legislation Review.*

vided in every state except Alabama that one member shall be a representative of the employees, while all but Alabama and Connecticut provide for representation of employers. The Oklahoma board represents farmers in addition. Many states forbid that more than two members of the board be chosen from the same political party. In other states the labor commissioner acts as mediator, as in Idaho, Indiana, and Maryland. In states having industrial commissions, a chief mediator is appointed along with temporary boards for arbitration.

In a score or so of states compulsory investigation is provided for.[1] The state board of arbitration *must* proceed to make an investigation (1) on failure to adjust the dispute by mediation or arbitration, as in Indiana and Massachusetts; (2) when it is deemed advisable by the governor, as in Alabama; or (3) simply when the existence of the dispute comes to the knowledge of the board, as in Colorado and Vermont. In other states such investigation is permissible. The board of arbitration *may* investigate (1) when it is deemed advisable by the industrial commission, as in New York. In Ohio the industrial commission can make an investigation, if it deems necessary, where a strike exists or is threatened, but if no settlement is obtained on account of the opposition of one of the parties, investigation is to be made only if requested by the other party. Compulsory investigation may be employed (2) when both parties refuse arbitration and the public would suffer inconvenience, as in Illinois and Oklahoma, or simply where the parties do not agree to arbitration, as in New Hampshire; (3) or generally, whenever a dispute occurs, as in Connecticut and Minnesota.

Provision for enforcement of an arbitration award when arbitration has been agreed to by representatives of both sides is made by about a dozen states. In Illinois, if the court has ordered compliance with an award, failure to obey is punishable as contempt, but not by imprisonment. In Idaho and Indiana the award is filed with the district court clerk, and the judge can order obedience, violation being punishable as contempt,

[1] Alabama, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New York, Ohio, Oklahoma, Oregon, South Dakota, Utah, Vermont.

but imprisonment may be inflicted only for wilful disobedience. In Missouri violation of a binding award is punishable by a fine or jail sentence, and in Ohio a binding award may be enforced in the county court of common pleas as if it were a statutory award. In Nevada, Texas, and Alaska the award is filed with the district court clerk, and may be specifically enforced in equity. In Nevada appeal is made to the supreme court, in Texas to the court of civil appeals, and in Alaska to the United States Circuit Court of Appeals. Colorado is the only state that has copied (1915) the Canadian act forbidding strikes or lockout in certain industries pending investigation and recommendation.

In about twenty states the voluntary agreement to arbitrate must contain a promise to abstain from strike or lockout pending arbitration proceedings.[1] In Massachusetts it is the duty of the parties to give notice of impending stoppage of work. In Nevada and Alaska strikes or lockouts during arbitration, and in Alaska for three months after, without thirty days' notice, are unlawful and ground for damages.

b. Federal Legislation. Federal legislation on mediation and arbitration is comprised in five acts concerning interstate commerce carriers, the act of 1888, the act of 1898 (the Erdman Act), the act of 1913 (the Newlands Act), Section 8 of the act creating the Department of Labor, also enacted in 1913, and Title III of the Transportation Act by which the railroads were returned to private hands on March 1, 1920, at the end of the war-time period of government control and operation. The act of 1888 provided, on the initiative of the President of the United States, for voluntary arbitration, compulsory investigation, and publication of the decision. It also provided that the President might appoint two commissioners, who, with the United States Commissioner of Labor, should investigate controversies and make to the President and to Congress a report, which should be published. The investigation might be made on application of one of the parties, of the governor of the state concerned, or on the President's own motion. The act of 1888 was on the statute books ten years and in that time no

[1] Alabama, Alaska, Colorado, Connecticut, Illinois, Indiana, Iowa, Louisiana, Maine, Massachusetts, Montana, New Hampshire, Ohio, Texas, Utah, Vermont.

attempt is known to have been made to apply the arbitration provision. Only once was an investigating commission appointed, that for the Pullman strike at Chicago in 1894, and on that occasion the commission took no action toward settling the dispute.

In 1898 the Erdman Act[1] was passed, repealing the earlier law. It applied to common carriers and their officers and employees except masters of vessels and seamen, engaged in interstate commerce, by railroad or by railroad and water, the term "employees" including only those actually engaged in train operation. The act was therefore restricted to engineers, firemen, conductors, trainmen, switchmen, and telegraphers. In case of a dispute, the chairman of the Interstate Commerce Commission and the Commissioner of Labor must on application of either party endeavor by mediation to adjust the difference. Mediation was conditioned on request by one party, and on acceptance of the mediator's offer by the other party. If mediation proved unsuccessful, the mediators were to urge arbitration, and if the parties agreed, a board of arbitration was formed, one member being named by each party and the third by these two. Failing their agreement on a third, he was to be named by the commissioners. The submission was to contain the following provisions: Pending arbitration the status existing immediately prior to the dispute was not to be changed; the award was to be filed with the clerk of the United States circuit court for the district and should be final and conclusive except for error of law; the parties must be bound by the award and it might be specifically enforced in equity, as far as the powers of a court of equity permit; neither side was to cease work on account of dissatisfaction with the award, for three months, without thirty days' notice; the award should continue for one year and no new arbitration should be had on the same subject in that time. The award being filed, judgment was to be entered accordingly at the end of ten days, unless exceptions were filed for matter of law. Appeal might be taken from the decision of the circuit court to the circuit court of appeals, whose determination should be final. The arbitrators were given powers of compulsory investigation, and strikes or discharge of employees

[1] United States, Laws 1898, C. 370.

except for good cause were made unlawful pending arbitration and for three months after an award. Violation subjected the offender to liability for damages.

During the first eight years after the enactment of the Erdman law only one attempt was made to invoke it,[1] and that proved futile; but from 1906 until the act was superseded there was no serious strike, actual or threatened, in which one of the parties did not seek settlement under its terms. Only one failure to adjust, when mediation was accepted before a strike began, is recorded. From 1898 to 1912, forty-eight application for mediation and arbitration were received, the total mileage involved having been over 500,000 and the number of employees over 160,000. Nineteen applications were made by employers, thirteen by employees, and sixteen by both together. Mediation was involved in forty-four cases, of which eight were carried to arbitration. Four cases were directly submitted to arbitration. Almost invariably, when one side applied for mediation, the offer was at once accepted by the other, the exceptions having been comparatively unimportant. At the time the Erdman Act was passed the arbitration features were regarded as paramount, but in practice the mediation features proved more valuable. Mediation proceedings were made as informal as possible. Conferences were held with the two parties separately, a joint meeting being held only when complete settlement or agreement to arbitrate was reached, and a fixed rule was observed that neither side should know what concession the other was willing to make, until the final agreement. The terms of settlement were not published without authorization of the parties. In the twelve arbitration cases, the first two arbitrators were able to agree on the third in only three instances. In no case was there repudiation by either side of an arbitration award, and there is only one instance of an appeal to the court, which proved most unsatisfactory on account of the prolonged litigation necessary.[2]

In July, 1913, the Erdman Act was superseded by the Newlands Act.[3] It provides that a Commissioner of Mediation and

[1] 1899.

[2] The act of March 4, 1911, authorized the President to designate any member of the Interstate Commerce Commission or of the Court of Commerce to take the place of the chairman.

[3] United States, Laws 1913, C. 6.

Conciliation be appointed by the President with the advice and consent of the Senate, his term to be seven years. The President is also to designate not more than two other government officials, appointed with the consent of the Senate, to constitute, with the commissioner, the United States Board of Mediation and Conciliation. In the same manner the President must appoint an assistant commissioner of mediation and conciliation, to take the place of the commissioner if he be absent or the office vacant, and otherwise to assist him. In case of a controversy to which the law applies either party may apply to the Board of Mediation and Conciliation, which must seek to effect an amicable adjustment and, if unsuccessful, must urge arbitration. If interruption of traffic is imminent and would prove detrimental to the public, the board may proffer its services as mediator. In case of a dispute over any agreement reached through the mediation of the board, either party may apply to it for an opinion. On the failure of mediation, a board of arbitration may be formed, composed of six or three arbitrators. Each side chooses two members, or one member, and these choose together the remaining two or one. In case of failure to agree, the Board of Mediation and Conciliation names the remainder. Unorganized employees may choose their representative through a committee. The agreement to arbitrate must comply with the following requirements: (1) It must be in writing. (2) It must state arbitration is had under the act. (3) It must specify whether there are to be three or six arbitrators. (4) It must be signed by the accredited representatives of both parties. (5) It must specify the questions to be decided. (6) It must state that a majority award is valid. (7) It must stipulate the maximum interval from the completion of the board to the beginning of hearings. (8) It must stipulate the maximum interval from the beginning of the hearings to the handing down of the award, this time to be thirty days unless otherwise agreed. (9) It must state the date on which the award becomes effective and the life thereof. (10) It must promise faithful execution of the award. (11) It must declare that the award, testimony, etc., are to be filed with the clerk of the appropriate United States district court. (12) It may provide that differences as to interpretation be referred back to the board, their ruling to have the force of

the original award. Upon consent of both parties the board of arbitration is given powers of compulsory investigation. The arbitration agreement must be acknowledged before a notary public, the clerk of a United States district or circuit court, or one of the Board of Mediation and Conciliation. The award is to become operative in ten days after being filed, unless exception be taken for matter of law apparent upon the record. Decision is rendered by the district court, or, on appeal, by the circuit court of appeals. Parties may jointly ask to have a board of arbitration reconvened. Nothing in the act may be construed so as to require service of any employee, and no injunction or other legal process may issue to compel performance by any employee of a contract.[1] For the four years ending June 30, 1917, the Federal Board of Mediation and Conciliation functioned in seventy-one controversies, fourteen of which were settled partly or wholly by arbitration, and fifty-two by mediation.[2] One dispute was settled by congressional action, the Adamson law, which meant, in effect, the breakdown of the Newlands Act.

The outstanding feature of events leading up to the Adamson law of September, 1916, was the failure of arbitration by existing agencies. The demands of the railway brotherhoods were met with counter-demands by the railway managers and the proposal to refer demands of both sides to arbitration under the Newlands Act or by the Interstate Commerce Commission. The brotherhoods refused arbitration. Their experience with settlements by third parties had not been fortunate, they asserted. An overwhelming strike vote set the stoppage of work for September 2, 1916. The Federal Board of Mediation and Conciliation exercised its prerogative of offering mediation, but a four-day conference failed to bring agreement. Facing a countrywide railroad tie-up, the President conferred with both sides to the controversy and proposed: (1) the concession of the eight-hour day; (2) postponement of the other demands until a commission appointed to investigate the effect of the

[1] F. H. Dixon, "Public Regulation of Railway Wages," *American Economic Review*, Vol. V, 1915, pp. 245-269; United States Bureau of Labor, *Bulletin No. 98*, January, 1912, "Mediation and Arbitration of Railway Labor Disputes in the United States," C. P. Neill.

[2] Report of United States Board of Mediation and Conciliation under Newlands Act, December, 1917, p. 3.

eight-hour day reported. The brotherhoods agreed, but the managers delayed. The President asked Congress for legislation not only to deal with the existing situation, but also to remedy the all too apparent failure of the Newlands Act. The congressional answer was the Adamson law, passed on the day the strike was to have gone into effect. The law embodied just the proposals made by the President to the railroad men and employers.

It was plainly evident that the Federal Board of Mediation and Conciliation met defeat largely through the refusal of the workers to submit voluntarily to arbitration. This difficulty was recognized by the President again in December, 1916, when he asked Congress for compulsory arbitration legislation. War legislation swamped Congress before action was taken on his recommendation.

The Newlands Act again failed in March, 1917. At that time the brotherhoods renewed strike threats, owing to the delay of the Supreme Court in deciding the constitutionality of the Adamson law[1] and to the alleged evasions of the railroad managers during the Supreme Court's delay. Disregarding the existing Federal Board, the President immediately appointed a committee of the Council of National Defense to mediate. Into the resulting agreement was written the establishment of the eight-hour day and provision for a commission of eight, representing employers and employees, to decide disputes under the agreement. The Eight-hour Commission appointed under the Adamson law reported inconclusively shortly after the railroads were taken under control by the government for the period of the war.

The labor situation was immediately taken hold of when the government assumed railroad control and operation in December, 1917, following the breakdown of the roads. A Railway Wage Board was appointed in January to make recommendations to the Director-general, and a Division of Labor, headed by a brotherhood official, was created in February to be the connecting link between employees and officials on one hand, and Railway Boards of Adjustment, when later instituted, on the other. The Railway Wage Board's recommendations were

[1] Finally upheld in Wilson *v.* New, 243 U. S. 332, 37 Sup. Ct. 298 (1917).

accepted by the Director-general and orders were issued providing for substantial increases in wages among all classes of employees. Thereafter a permanent advisory board on "Railway Wages and Working Conditions" was created. Successive orders of the Director-general formulated a liberal labor policy and established machinery for handling disputes under these orders. Board of Adjustment No. 1, dating from March, 1918, dealt with controversies affecting conductors, engineers, trainmen, firemen, and enginemen; up to December 1, 1918, it had docketed 408 cases and made 292 decisions. Board of Adjustment No. 2, authorized in May, 1918, for workers in mechanical departments, handled 147 cases and made 128 decisions up to December, 1918. Board of Adjustment No. 3, with jurisdiction over telegraphers, switchmen, clerks, and maintenance-of-way men, had docketed only one case in its fortnight's existence prior to December 1, 1918.[1] In all cases coming before Boards of Adjustment it was obligatory that the usual attempt at carrying the disagreement to the chief operating official of the railroad be made before calling on the boards. The boards were composed equally of representatives of the administration and employees, and their liberal decisions did much to smooth out the differences remaining after the breakdown of the Newlands Act and the enactment of the Adamson law. While the railroad employees officially voiced their approval of the government boards of adjustment, on which only the parties in dispute were the arbitrators, they have consistently opposed the submission of disagreements to a neutral party which is in their opinion either biased or ignorant.

The act of March 4, 1913, creating a Department of Labor, provides that the Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes, whenever in his judgment the interests of industrial peace may require it to be done.[2] No appropriation was made for the expenses of commissioners till October, 1913, and none for their compensation till April, 1914. Until the latter date, therefore, it was necessary to detail government employees from their regular work. An executive clerk was appointed in July, 1914, and the work systematized. In three

[1] Annual *Report* of Director-general of Railroads, 1918, pp. 13-16.
[2] United States, Laws 1912-1913, C. 141, Sec. 8.

important disputes the Secretary of Labor's offer of mediation was rejected. In the Père Marquette Railroad shop strike, the Calumet copper miners' strike, and the Colorado coal strike, mediation was desired by the employees, but declined by the employers. In case mediation fails, arbitration may be proposed by the mediators, but they do not themselves act as arbitrators. In the five years 1915 to 1919, inclusive, the Secretary of Labor took cognizance of 3,644 cases, effecting 2,539 adjustments. During 1919 alone, 1,780 assignments of commissioners of conciliation resulted in 1,223 adjustments, not including 219 cases referred to the National War Labor Board.[1] From 1920 to 1925 inclusive, 2,366 disputes, strikes, lockouts, and threatened strikes were settled. During the fiscal year 1925, there were 559 cases in the hands of the division of conciliation which involved directly or indirectly about 334,000 workers.[2]

In addition to the direct efforts of the Secretary of Labor, two arbitration boards were called into existence to meet exigencies of war. The President's Mediation Commission, appointed in the fall of 1917, under the chairmanship of the Secretary of Labor, made settlements or investigations in (1) the copper mines of Arizona, (2) the California oil fields, (3) the Pacific coast telephone dispute, (4) unrest in the lumber industry of the Northwest, (5) the packing industry. It should be recalled that this commission was a government enterprise beginning its study generally after an acute situation had arisen. Its primary intention was investigation rather than arbitration; but settlements were made in all disputes except the lumber industry, largely because existing means of arbitration had failed.

The National War Labor Board was the outgrowth of conferences between representatives of employers' and employees' organizations, the public, and the government. Its existence was not sanctioned by specific legislation, but was the result of a presidential proclamation in April, 1918. The membership of the board consisted of joint chairmen representing the public, selected respectively by employers' and employees'

[1] Secretary of Labor, *Seventh Annual Report*, 1919, p. 43.
[2] Secretary of Labor, *Thirteenth Annual Report*, 1925, p. 31.

national organizations, and five representatives of each of the two groups. Premises to govern its decisions were the first business of the board, and the following were arrived at: (1) No strikes or lockouts during the war. (2) Settlement of controversies by mediation or conciliation. (3) Provision of machinery for local mediation and conciliation. (4) Summons of parties to the controversy before the national board in the event of failure of local machinery. (5) Failing to reach decision in the national board, provision of an umpire appointed by national board or by the President from a panel of disinterested persons. (6) Refusal to take cognizance of dispute where other means of settlement by agreement or federal law had not been invoked. (7) Right of employers and employees to organize without discrimination. (8) Right of collective bargaining. Acting on these principles as an official expression of the government's war labor policy, the board received 1,245 controversies up to May 31, 1919. In 462 of these cases awards or finds were made, 391 were dismissed because of voluntary settlement, lack of jurisdiction, or for other reasons, 315 were referred to other agencies having primary jurisdiction, fifty-three, involving only three distinct disputes, remained on the docket because the board was unable to agree, twenty-three were pending, and one was suspended.[1]

In the enforcement of awards the National War Labor Board had no specific legal sanction or penalty; appeal was usually made to patriotic motives. There were but three instances of resistance to the board's awards. In one case the Western Union Telegraph Company discriminated against union employees and refused to abide by the board's decision in favor of the men. The President was rebuffed in his appeal for patriotic acquiescence, but was sustained by Congress in taking over the telegraph lines for the government. Later, in September, 1918, the organized workers at Bridgeport, Conn., struck against an award of the board, but on the President's threat of unemployment enforced by governmental agencies, they returned to work. Finally, the Smith & Wesson Company in Springfield, Mass., manufacturing firearms, refused to abide by the board's warning not to discriminate against

[1] Secretary of Labor, *Seventh Annual Report*, 1919, pp. 112-113.

union employees, and the President retaliated by ordering the War Department to take over the factory.

With the cessation of the war and the return of the railroads to private ownership, a new plan of settling industrial disputes was inaugurated for the railroads by the Transportation Act of 1920. This act provided for the creation of a Railroad Labor Board and made permissible the establishment of railroad boards of labor adjustment by agreement between the carriers and employees. The Railroad Labor Board was organized in April, 1920, the President of the United States choosing its nine members with concurrence of the Senate. He was required by law to choose three members from a panel selected by the carriers, three from a panel selected by the workers, and three to represent the public. The law provided a routine by which controversies should come before the board, but gave it no power of enforcement except the power of publishing its decisions. In July, 1920, the board issued a general decision providing for wage increases to all classes of railroad employees. Subsequently in July, 1921, and July, 1922, the board issued general decisions providing for wage reductions for all classes of railroad workers. Since that time the board has issued only specific decisions growing out of small isolated controversies over wages and rules.[1]

On the whole, the great majority of the Board's decisions have been accepted by both sides. The shopmen, however, struck in July, 1922, against certain wage and working-rule decisions of the Board, and the Pennsylvania System refused to deal with the shopcrafts union even after that union had been approved by the Board as the proper representative of its employees and the Pennsylvania System had been ordered by the Board to deal therewith. These are the two outstanding cases in which the Board was unable to enforce its decisions.

The bulk of the railroad workers and a considerable number of the managers became dissatisfied with the Railroad Labor Board. They reached agreement on a new measure, designed to leave the major responsibility for settling disputes

[1] *Report,* United States Railroad Labor Board, April 15, 1920, to December 31, 1925.

directly upon employers and employees. This measure, known as the Railway Labor Act, was passed by Congress and signed by the President, May 20, 1926. The new law abolishes the Railroad Labor Board set up by the Transportation Act of 1920 and repeals the mediation, arbitration, and conciliation provisions of the Newlands Act of 1913. The machinery that is created is, briefly, this: Adjustment boards to deal with grievances or disputes over the application or interpretation of existing agreements are to be established by joint agreement. A federal Board of Mediation is created, to be appointed by the President, with the duty of intervening at the request of either party or on its own motion, in any unsettled labor dispute, including disputes that the adjustment boards have failed to settle as well as disputes over changes in wages, rules, or working conditions which are not within the jurisdiction of the adjustment boards. If the Board of Mediation is unable to bring about an amicable adjustment between the parties, it is required to make an effort to induce them to consent to arbitration. Boards of arbitration are provided for when both parties consent to arbitration. Resort to a board of arbitration is voluntary, but its decisions are compulsory and enforceable. If a dispute is not settled by any of these methods, and if in the judgment of the Board of Mediation the dispute threatens substantially to interrupt interstate commerce, the board shall notify the President, who is thereupon authorized in his discretion to create an emergency board to investigate and report to him. After the creation of the emergency board and for thirty days after it has made its report to the President no change, except by agreement, shall be made by the contending parties in the conditions out of which the dispute arose. Unlike the now defunct Railroad Labor Board, the new Board of Mediation will hand down no "decisions," but only serve as an aid in bringing about voluntary agreements. The last-resort function of the emergency board is to enable the President to inform the public on which side to lay the blame for failure to reach an agreement.

A semiofficial instance of arbitration occurred in the case of the great anthracite coal strike in Pennsylvania in 1902. In this case the government appointed an arbitration commission on the request of the parties without any special

authority in law.[1] The miners wanted an agreement, the operators felt that it would not be binding and that the union obstructed discipline. In October, five months after the beginning of the strike, President Roosevelt appointed the Anthracite Coal Strike Commission. The men returned to work and the commission began its inquiry. It took the testimony of 558 witnesses. The losses of the strike were estimated at $25,000,000 in wages, $1,800,000 in relief funds, $46,100,000 to the operators, and $28,000,000 in freight receipts to transportation companies. The commission found the underlying cause of the strike to be the issue of recognition of the union. The award stated that the commission would recommend recognition of the union, were the anthracite unions separated from the bituminous unions, but that difficulties should be referred to a permanent joint committee of miners' and operators' representatives, with an umpire appointed by the federal court, and that the life of the award should be till March, 1906. The commission further recommended a system of compulsory investigation. The agreement has been renewed, with modifications.

Much the best results of state or government intervention have been achieved through mediation. The government's war policy was expressly to resort to voluntary arbitration only after every effort at mediation had been made. The Railroad Administration, in particular, avoided arbitration, with satisfactory results. Only in extreme cases did the government use its sweeping war powers to enforce decisions, and experience has shown that both employers and employees generally have been moderately well satisfied with voluntary procedure. Public investigation, up to the last few years, has seldom been used. On the whole, a good deal has been accomplished in the promotion of industrial peace, the chief obstacle in the way of success having been a lack of confidence on the part of the disputants in the impartiality or ability of the state or government officials. The powers of compulsory investigation and publication of the recommendations without consent of

[1] United States Bureau of Labor, *Bulletin No. 43*, November, 1902, "Report to the President by the Commissioner of Labor"; *Bulletin No. 46*, May, 1903, "Report of the Anthracite Coal Strike Commission."

the parties, adopted in nearly half the American laws, have seldom been resorted to.

3. Coercion by Government

(1) *Restrictions on Strikes and Lockouts*

The preceding section has covered the mediatory measures which governments have adopted to diminish strikes and lockouts. Their essence, whether it be mediation, conciliation, or arbitration, is the voluntary acquiescence and participation of both the employer and the employees acting collectively. As long as arbitration is voluntary the bargaining power of neither party is affected.

From the point of view of legislation the strike and lockout have two aspects. On one hand, they create injury to the public. On the other hand, they are a part of the bargaining process by which wages are determined. To the public the effects of the strike and lockout are similar. Both cause sudden stoppage of trade, failure to pay debts, expense of public relief, and sometimes disorder and famine prices. Hence legislation, springing simply from the needs of the public, treats the strike or the lockout as a public nuisance.

But as methods of bargaining, these two are not equivalent. To the employer the right to lock out is comparatively unimportant. He may use it to discipline an unruly set of employees, to discourage unionization in his factory, or to "get the start" of his men. But in the usual bargaining he has no need of it. He can keep his factory gates open even though, at the same time, he may be reducing wages or refusing demands for higher wages. He is not forced to lock out and he can force his employees to strike or submit. Legislation which prohibits or restricts the lockout does not greatly weaken the bargaining power of the employer.

But to the employees there can be no collective bargaining without the right to strike. For a strike is nothing but the collective refusal of the terms of the employer. Legislation which restricts or prohibits strikes, restricts or prohibits collective bargaining itself. It leaves the employee a helpless individual in the face of an aggregation of capital, unless the

same law which restricts or prohibits the collective bargaining provides an adequate substitute in its place.

Consequently, as affecting the collective bargain, there are two essentials to an adequate measure of compulsory arbitration. First, the power to restrict strikes and lockouts. This is directed primarily against the employees. Second, the power to enforce awards as to wages and conditions of labor while the plant is running. This is directed primarily against the employer. There necessarily goes with these two powers the power of compulsory investigation where one of the parties is unwilling to submit to arbitration, but such power is but a means to an end of obtaining a just award, and is as essential to a system of public information, like the Canadian Industrial Disputes Investigation Act of 1907, as to a system of coercion, like the Australian arbitration acts. It is the joint presence of these two essentials which makes the difference between compulsory arbitration and minimum wage boards on one hand, and compulsory arbitration and the Canadian Disputes Investigation Act on the other hand. The wage board enforces a minimum award, but does not restrict the right to strike.[1] The Canadian act restricts the right to strike without notice, but grants no power to enforce an award.

The degree of restriction upon the strike, as expressed in different laws, varies widely. Carried out in administration it varies still more widely. In the Canadian Disputes Act and in the Colorado Industrial Commission Act of 1915, only strikes without notice and hearing are unlawful. The same is true in the case of "unregistered" unions in New Zealand. On the other hand, all strikes by "registered" unions in that colony and strikes by anybody in most of the Australian states are unlawful. Because of administrative weakness, as will be shown, the actual coercion is very much less than is indicated on the face of these laws.

Compulsory awards were first introduced in North America by the Kansas "court of industrial relations" law of 1920.[2] The acts of a dozen other states [3] and the Canadian Industrial Disputes Investigation Act contain provisions for enforcing

[1] Except under special circumstances.
[2] See p. 185.
[3] See "Mediation by Government," p. 135.

awards which have first been voluntarily accepted by both parties. New Zealand goes a step further than this toward coercion, for there it is optional for either employers or employees to register, but one of the parties registered can appeal for an award which will be enforced against both the parties. Finally, in Australia, and in Kansas under the law just mentioned, there is left no option to either employers or unions.

(2) *Development of Coercive Intervention*

a. England. This development toward restriction of the right to strike and the substitution of wage awards is sometimes treated as a step backward. This is entirely too simple a view. It is true that the freedom of the bargain has developed from a former time of government coercion and now shows tendencies to go back under government coercion again. But the modern coercion is different from the old coercion, since the modern government derives its authority from a broader range of classes than those which controlled the older governments. In the England of the Middle Ages, at first the lord of the manor and the town officials determined the wages. The national catastrophe of the Black Death in the fourteenth century caused Parliament to fix wages by law in certain occupations. This proved unwieldy and Parliament gave the right to declare wages to the local justices of the peace. This system was codified in the Elizabethan Statute of Apprentices, 1562. England therefore was under a local wage board system, but on this local wage board was no representative of labor. The wage determined was not the minimum wage, as at present, above which the employee can bargain and below which the employer cannot bargain. It was a fixed wage. It was as unlawful for the employee to demand more as for the employer to offer less. It thus gave no freedom to either party for either individual or collective bargaining.

In the seventeenth and eighteenth centuries England ceased to be an aggregation of local markets and became a national market. A local system of wage determination became absurd and fell into disuse. In spite of the protests of the incipient trade unions of the time, the employer was freed from the compulsory wage and obtained the right to bargain with the

individual employee. On the other hand, at about the same time, the right of collective bargaining by employees was denied both by statutes and by judicial decisions. In 1720 Parliament began a series of acts against combinations of labor. In 1721 the court brought within the common-law doctrine of conspiracy a combination of laborers to raise their wages. This policy reached its culmination in the conspiracy acts of 1799 and 1800.[1] But, beginning in 1824, when a strike to raise wages was partly legalized, the nineteenth century showed a continuous development in England of the right of collective bargaining. This formal right has been backed by unions which are both strong and reliable. The public has been saved much of the nuisance of the strike and lockout by a long series of voluntary trade agreements. Yet, recently in several of the sweated industries and in coal mining,[2] the government has formed minimum wage boards which both protect the workers against the individual bargain of the employer and give a basis for collective action by the employees. Thus the twentieth century opens with a policy exactly opposite to that of the eighteenth century. Collective bargaining is free, but individual bargaining, when likely to be oppressive to employees, is restricted.

b. Australasia. In Australasia,[3] Canada, and the United States there was much the same development as in England up to about 1890. Since 1890, however, there has been in Australasia a complete revolution in policy. In 1894 New Zealand passed its compulsory arbitration act. The next state

[1] See Bryan, *Law of Conspiracy*, 1909, for a general discussion of the subject.

[2] See "The Minimum Wage," pp. 202, 203.

[3] The material used in determining facts and conclusions regarding Australasia is mostly of a controversial nature. The wages boards of Australia have had a recent thorough and impartial treatment by Dr. Hammond ("Wages Boards in Australia," *Quarterly Journal of Economics*, Vol. XXIX, 1914, pp. 98-148, 326-361, 563-630). For the rest, the books on the subject are either too old (books age rapidly in regard to the Australasian labor situation) or too controversial, or if government publications, too colorless. The parliamentary debates which are given in full for the Commonwealth, Victoria, and New Zealand have been mainly relied upon. Three Australian labor papers have been consulted, but the anti-labor papers have been accessible only in the forms of clippings or quotations, of which the most valuable is the report of the American Trade Commission of the National Association of Manufacturers (see Bibliography).

to adopt compulsory arbitration was New South Wales in 1901. It was followed by Western Australia in 1902, by the Commonwealth itself in 1904, and by South Australia and Queensland in 1912. Meanwhile Victoria and Tasmania had adopted compulsory wage boards. In twenty years all of Australasia has adopted laws which are coercive either of the individual bargain, the collective bargain, or both. Even in the United States and Canada, through the Canadian Act of 1907, the Colorado Act of 1915, and the Kansas Law of 1920, there has been reintroduced coercion against strikes or lockouts in certain industries affected with a public interest.

No single reason explains this new development. It rests in part on the comparative failure of collective bargaining to bring about collective agreements, in part on the broader democratic source from which modern governments derive their authority and which makes their coercion less oppressive to workmen, in part on the growing importance of industries affected with a public interest, and latterly, in part, on the demand of employers for protection against more powerful unions.

The evolution of coercion in Australasia to an extent far greater than that of the United States is a normal result of a development, economic, social, and political, sharply in contrast with our own. The public has been, itself, the largest employer of labor through its government railroads and other public utilities. Private employers of labor, particularly industrial employers, have been men of small capital, employing few hands as compared with those in the United States. Apparently the capitalistic power which the Australasian labor leaders attack most bitterly is that of the shipper and the merchant. The position of the employer is somewhat similar to that in the United States in 1830; but the position of the employee has been sharply different. In 1830 in the United States the workingmen were striking for a ten-hour day. In Australasia, before compulsory arbitration had come into existence, the eight-hour day had become the general rule; but in America there is no standard. The hours range from eight to twelve, the days from five and a half to seven a week, the pay from $2 to $6 a day in the same locality. The bricklayer gets from two to even four times as much as the hodcarrier, measured by the hour, and an even higher ratio in comparison

with ordinary laborers.[1] In Australasia there is no such difference. The bricklayer gets but 20 per cent to 50 per cent more than the building laborer.[2] In the United States, labor is divided both politically and industrially by the negro and the immigrant. During the last twenty years, the bulk of our immigration has been from people receiving relatively low wages even for Europe. The immigration into Australasia has been comparatively light. It has almost all come from the British Isles, from a people receiving the highest wages in Europe. There have been no difficulties presented by conflicting races and different languages: There has been no large body of disfranchised or unnaturalized laborers. The election laws have been continuously more favorable to labor than those of the United States. In New South Wales, for example, an immigrant from Great Britain can vote in one year, and one from any of the Australian states, in three months. Provision is made for absent voting. The entire labor force, not merely the skilled workmen, as in some of our Eastern and Southern states, can be mobilized at the polls.

The power of labor at the polls was first shown during the very years when labor proved impotent in collective bargaining. From 1890 to 1893 labor was defeated in four disastrous strikes. In 1890 a maritime strike paralyzed the shipping of Australia and New Zealand. To an exporting people, like the Australasians, a maritime strike ties up business as completely as a railroad strike in the United States. In the midst of the strike the unions asked for arbitration. The employers refused and the unions were beaten. The next year there was a sheep-shearers' strike, mainly for the right of collective bargaining. There was great public disorder. The unions were defeated. In 1892 the miners at Broken Hill, New South Wales, before they struck, asked for voluntary arbitration. This the employers refused and in the strike that followed the men were defeated. Another turbulent and disastrous sheep-shearers' strike marked the year that followed. During those

[1] Great Britain, Board of Trade, *Report on Cost of Living in American Towns*, 1911, pp. 65, 107.

[2] Australia, Commonwealth Bureau of Census and Statistics, Labor and Industrial Branch, *Report, No. 2*, 1913, "Trade Unionism, Unemployment, Wages, Prices, and Cost of Living in Australia," p. 36.

same four years the number of parliamentary seats held by labor greatly increased.

These were the events preceding 1894, when the first compulsory arbitration act was passed in New Zealand. Strikes had meant loss to the public and defeat to the employees. Voluntary arbitration had been refused by the employers. With a progressive Liberal Party dominant in New Zealand, with the Labor Party developing in Australia, the unions turned to government for coercive assistance in wage determination.

Unlike Australia, New Zealand has never had a large Labor Party, but a month after the defeat of the maritime strike a progressive Liberal Party came into power to hold office for the next twenty years. It was under this party that the first compulsory arbitration act was passed, as well as all the succeeding acts and amendments up to the amendment of 1913. The first act had the support of the representatives of labor, but was opposed by the employers. New South Wales had passed a law for voluntary arbitration in 1892 and, in the next large strike which followed, the employers had refused to accept arbitration under the act. So at that period there was little to show that voluntary arbitration laws were of any use. It seemed that if strikes were to be diminished at all it must be by compulsion.

The New Zealand act went into effect in 1895. Thence until 1906, there was a general period of prosperity, and what would probably have been a series of victorious strikes on a rising market became a no less victorious series of awards of the court of compulsory arbitration. Strikes were few and insignificant. With 1907 the prolonged period of prosperity ended. Thereafter the awards have little or no increases of wages. There was a series of illegal strikes and a readjustment of the laws in 1908. In 1913 and 1914 the law was put to a new trial. There was a spread of socialism and syndicalism among the employees. A waterside strike occurred, accompanied by many sympathetic strikes. The government's answer was to limit to narrower grounds the right to strike. Compulsory arbitration has now had twenty years of trial under conditions of ease and under conditions of stress. It started with a law which was just over the border-line of

voluntary arbitration. With successive periods of strain the act has been strengthened until now it is clearly coercive.

The act as passed in 1894 provided for district boards of conciliation,[1] and one court of arbitration. The boards of conciliation were composed of an equal number of representatives of employees and employers. The representatives of both employers and employees were nominated by the registered unions of employers and employees within the district. The court of arbitration consisted of one supreme court judge, assisted by one member nominated by the registered unions of employers and one member nominated by the registered unions of employees. Neither the boards of conciliation nor the court of arbitration was authorized to receive any demands except from unions registered under the act. A demand received from a registered union, either of employers or of employees, must first pass before a board of conciliation, but if the award was unsatisfactory to either party an appeal could be taken to the court of arbitration, whose award was binding. During the hearings and until the expiration of the award it was unlawful to strike or lockout.

The experience of twenty years has not changed materially the court of arbitration, but the boards of conciliation have been transformed. They were always a cause of irritation and legislative tinkering, as they seem to have been from the beginning little more than boards of argumentation. Being appointed by districts rather than by trades, their members had no expert knowledge of the particular disputes brought before them. In the present law of compulsory arbitration, enacted in 1908, the machinery of the boards in the Canadian Disputes Act was applied. Commissioners of conciliation are appointed who receive appeals and who appoint advisers nominated by both parties, who must be men with practical experience in the trade concerned, either as employers or employees. This system has proved to be more successful than the earlier system.

As to strikes and lockouts, the first act, on the face of it, implied an equal restriction on employers and employees. But, as employers did not appeal to the court, and as the registration on each side was voluntary and could be withdrawn on

[1] Seven were appointed.

short notice, the act meant for the employees voluntary arbitration with an enforceable award. This worked smoothly up to 1906 while wages were rising and the coercion of the act was all upon the employer.

But the illegal strikes of 1907-1908 caused Parliament to increase the penalties for strikes by a provision for attachment of wages, to levy comparatively heavy fines on unions whose members struck, and to penalize all strikes or lockouts whether of registered unions or not, which were made without sufficient notice in public utilities and in certain industries, the steady continuance of which is affected with a public interest. This was adapted from the Canadian Disputes Investigation Act of 1907. The waterside strike of 1913-1914 caused Parliament to apply a somewhat similar provision to all strikes or lockouts in all industries. For unregistered unions the strikes without notice are not prohibited. For registered unions all strikes are prohibited.

As far as one can judge[1] the enforcement of penalties for strikes and lockouts has been pursued coolly and persistently under a system of moderate fines. Half the strikes which have occurred are perfectly legal strikes—strikes of unregistered unions—but there have been a number of serious illegal strikes. The waterside strike of 1913-1914 started with unions which had a perfect right to strike and spread by sympathetic action to other unions registered under the award, which therefore had no right to strike. New Zealand has not achieved industrial peace. One might question whether a system can ever be satisfactory in which it is illegal for some unions to strike and legal for others.

The act of 1894 in New Zealand recognized registered unions only. Neither the individual employer nor employee could appeal to its protection. This remains true for the employee under the latest amendment, but the individual employer now may register.

Though the first act contained no reference to preference to unionists, this preference was granted in the awards as early as 1896 and was incorporated in the law of 1900. In the earlier awards, preference to unionists simply meant that if

[1] Based almost entirely upon government reports and parliamentary debates.

there were a vacancy a union man must be given preference over a non-union man of similar ability. In the later awards, preference to unionists has become equivalent to a closed shop, for an employer is ordered to discharge a non-union man in favor of an unemployed union man. Union preference is customarily granted where the union can show that it had a strong organization previous to the dispute.

With the right to strike taken away, the problem of protecting labor leaders against victimization has consumed considerable attention both of the courts and Parliament, without results satisfactory to the unions. Provisions in regard to victimization have repeatedly been changed. Sometimes the burden of proof has been put upon the employer, sometimes upon the employee.

Registered unions, therefore, have gained a preference which amounts almost to a closed shop and some protection against victimization, but at the expense of very large control through court decisions. Initiation fees, membership fees, fines, procedure of unions, relations to other unions,[1] all have been brought either within the awards or within other court decisions. A recent decision which applies, however, to all unions, whether registered or not, declares that union funds may not be used for political purposes.[2] Thus the government makes politically innocuous the labor union which it encourages.

It might be answered that a registered union is free to cancel its registration and thus to escape control by the government, if obnoxious. But both in the strikes of 1908 and in the strike of 1913-1914 the employers coerced the employees into registering under the act by refusing to recognize any union which had not registered. This practical coercion, which seriously restricts the apparent voluntary character of the law on the side of unions, is at present the chief cause for complaint by labor leaders.

Where arbitration is voluntary, the awards represent an adjustment only between the demands of the two parties and are based on their relative strength. With the element of

[1] New Zeaalnd, *Journal of the Department of Labour*, January, 1914, p. 3.

[2] *Parliamentary Debates*, Fourth Session, 1914, pp. 659-665.

coercion the third party, the public, enters to determine that the awards shall not be inconsistent with its notions of a proper standard of wages. As shown above, compulsory arbitration in New Zealand has been largely voluntary on the part of the employees. Decisions, therefore, have taken into account little more than the respective demands of the two parties. But in two respects there has been a change of policy. Union tactics and the early awards limited the proportion of apprentices. The later awards generally specify no limit, but very sharply raise the wages of apprentices. The public purpose of open opportunity is thus subserved without being turned to the private end of the substitution of apprentices for journeymen. Again, the earlier acts allowed slow workers to receive less than the minimum wage only with the consent of the secretary or president of the union. This was changed in 1908 by allowing a state official to grant permits to slow workers.

The law was originally passed by the Liberal Party, favored by the labor unions, but opposed by the employers. In the crisis of 1908 the Liberal Party revised the law against the opposition of a portion of the Reform Party (the chief opposition party) and of the Labor Party. This revision the employers favored. In the debates in Parliament the leader of the opposition (later the premier) declared himself against compulsory arbitration, but in favor of an act somewhat similar to the Canadian Disputes Act. During the strike of 1913-1914 the Reform Party, later in power, declared in favor of compulsory arbitration and added to the law amendments which were distasteful to the labor Party. Up to 1920, however they differed in details, all parties in Parliament were committed to the principle of compulsory arbitration, the only opposition being from groups not yet represented in Parliament, like the Socialists and Syndicalists.

New Zealand was not exempt from labor troubles during the war. Whereas the arbitration court made seventy-one awards for the year ending March, 1915, this figure was raised to 168 for the year ending March, 1917.[1] It is reported that strikes during 1917-1918 were more than quadrupled over the preceding year, and at least twelve of these stoppages

[1] *New Zealand Official Year Book*, 1915, p. 758; 1917, pp. 575-576.

were serious in extent.[1] Nearly all strikes were among the unregistered unions. Observers of the situation point out that it is now the tendency for workers to demand direct negotiation and for employers to refer disagreement to the court. The fact that the court is finding it difficult to enforce penalties on the unions contributes to the dissatisfaction.

By far the most cogent explanation of the sharp rise in the number of labor disputes was the inability of the court to review wage awards to keep pace with increased costs of living. Parliament remedied the situation in 1918 by amending the act, granting the court power to reconsider awards where wages originally fixed had become inadequate owing to war prices.

Turning from New Zealand to Australia, three chief facts appear in the history of coercive legislation: (1) The laws were enacted and administered in the presence of a large labor party. (2) Two systems, compulsory arbitration and wage boards, have grown up side by side, until, in several of the states, the two have merged. (3) Australia, as a federal commonwealth, has had both federal and state courts of arbitration. It has been one thing to enact and administer laws of compulsory arbitration in the presence of an insignificant labor party, as in New Zealand. It has been very different to do the same in Australia, where the Labor Party was first a large third party, later a large second party, and in September, 1915, was in control of the Commonwealth and the majority of the states.

The period of the strikes of 1890-1893 was a period of extraordinary growth of a socialistic Labor Party. In 1890 there was but one labor member in all the legislatures of Australia. In 1893 there were eighty in the lower house.[2] The members of the upper houses are elected or selected under restrictive conditions.

This movement was a flash in the pan, but with the creation of the Commonwealth in 1899 a much more solid labor movement developed. There was a labor ministry for a few months in 1904, another labor ministry in 1910, just barely defeated by the popular vote of 1913. Again, during the Euro-

[1] *Christian Science Monitor*, September 16, 1919, p. 5.
[2] St. Ledger, *Australian Socialism*, 1909, p. 56.

pean War, there was another appeal to the polls and, upsetting all precedents and marking the distinction between the Australian labor movement and labor movements elsewhere, the Labor Party was victorious in a campaign based on its record of adopting a universal military service act. Queensland, New South Wales, Western Australia, South Australia, and even conservative Tasmania also came under labor ministries. One large state, Victoria, remained anti-labor. With labor parties taking the labor vote, with anti-labor parties having but slight chance of any large labor vote, with organization of labor on the farms as well as in the workshops, Australia is divided politically between the employer and the employee. This means that any law affecting wage bargains is enacted or administered by a party which unequivocally represents one or the other side to the bargain. If a labor party is in control, the compulsion of a compulsory arbitration law is not very real to the employee nor is it very real to the employer if an anti-labor party controls.

The two Australian states with the largest population, Victoria and New South Wales, were the first to adopt coercive measures, but one adopted the wage board system, while the other adopted the compulsory arbitration system. In 1896 Victoria enacted the first of its wage-board laws. In 1901 New South Wales enacted its first law of compulsory arbitration. Here we may contrast the workings of the minimum wage boards and compulsory arbitration as compared with the theoretical differences between the two systems.

In the early 'nineties, there was a strong humanitarian movement in Victoria, increased by the report of the parliamentary board of 1893 on the existence of sweated labor in Melbourne. The minimum wage bill, as originally introduced, applied only to women and was intended solely for the benefit of those who were suffering under unfair wage conditions. The act as finally passed in 1896 applied to both sexes, but only to those industries particularly notorious for low wages. Each wage board consisted of a chairman and an equal number of representatives elected by the votes of all employees and of employers. The employer had votes in proportion to his average number of employees. The wage board fixed wages, hours, and certain other matters, but could not grant union

preference. This method of election of representatives practically created state unions of employees and employers. The method proved unsuccessful. The elected employees and employers were too much committed to their electors. In the present system the employers and employees on the board are appointed, presumably from the more reputable employers and less militant employees. Decisions are based on what the more reputable employer pays and are designed to protect him from unfair competition. In fact, it was stated in one of the laws, since amended, that wage-board decisions should conform to what was "paid by reputable employers to employees of average capacity." This has gradually brought employers to favor the law. The law also has usually been favored by the Labor Party. It does not take away the right to strike, but provides such a ready substitute that Victoria, more than any other of the Australian states, can claim to be a "country" almost "without strikes."

The original wage boards were created in industries notorious for sweated labor and brought rapid improvement in the condition of workers. Wage boards have since greatly increased in number and have been extended to industries where wages are high and labor is organized. To mark the change of purpose in the creating of new wage boards it is sufficient to say that two of the new boards of 1912 were created against the protest of the labor members of Parliament, one of them at the petition of the employers, and that another wage board was given authority only over men workers because the women petitioned not to be brought under it. The wage-board system of Victoria, therefore, has been extended beyond its original purpose and has become a method of protecting reputable employers from unfair competition and insuring industrial peace by providing a ready means of adjustment of grievances.

Turn now to the turbulent history of New South Wales. Before compulsory arbitration was adopted, New South Wales was much more subject than Victoria to serious strikes, and such it has remained. This one state furnishes more than half of the days lost by strikes in all of Australia.[1] Compulsory arbitration cannot be said to have increased such disputes,

[1] Australia, Commonwealth Bureau of Census, *Labour Bulletin No. 4*, February, 1914, p. 262.

but simply not to have stopped them. After a futile voluntary arbitration law of 1892, New South Wales passed its first compulsory law in 1901. This act was especially important because on it was based the present Commonwealth Act of 1904. Here was first introduced the unique feature later copied in the Commonwealth Act, that the court itself must give its consent before any prosecution for a violation of the nature of a strike or lockout could be commenced. That consent was not frequently granted. For the rest, the act provided for a single court with final determinations on all matters within the scope of the act. Preference could be granted to unionists.

The act expired in 1908. The single court had not disposed of the cases brought before it with sufficient rapidity. The anti-labor ministry in power at that time adopted a comprehensive system of wage boards modeled after the Victorian system, whose determinations were subject to appeal to a special court of arbitration. All strikes were declared illegal. A system of fines was adopted to reach the union funds. Strikes, almost of the character of rebellion, followed, and the next year the same ministry rushed through a bill applicable to strikes in certain necessary industries, like coal mining. These provided a penalty of not exceeding twelve months' imprisonment for instigating strikes and the same length of time for mere participation in a strike meeting. Immediately there followed a strike of all the coal miners in New South Wales. The situation became intolerable and the Labor Party came back to power. A new act was passed in 1912. The severe penalties were withdrawn and special conciliation boards were created for mine workers.

The New South Wales law has not been uniformly and strictly enforced. It has been more of a wage-board system than a system of compulsory arbitration, for in comparatively few cases have the penal provisions of the act been invoked.

Among the other states, Western Australia copied the New Zealand model in its first law of 1902. But, as in New Zealand, the district conciliation boards proved a failure. In the laws of 1912 they were abolished, and now the court may appoint advisers or "assessors" to assist it. Interestingly enough, union preference, provided in the earlier law, disappeared from the

later one in spite of the fact that the new law was passed by a labor ministry. Reports of the actual working of the law are contradictory. The two other states, Queensland and South Australia, passed their first law in 1912, in both cases by the anti-labor party. The Queensland law was the result of a street-car strike. The South Australian law is noteworthy for its severe and elaborate penalties for acts connected with strikes, such as picketing.

Among the provisions of the new Commonwealth constitution of Australia, adopted in 1899, was the right to create a compulsory arbitration court for interstate disputes. This right was made substantial in 1904 by the passage of the Industrial Arbitration Act. The law was modeled on the 1901 act of New South Wales. There was no system of wage boards, but simply a single court of arbitration with its president the sole member. This court not only hears appeals, but can on its own initiative summon parties. Its determinations are final, but it "may" state a case to the high court (the Supreme Court of the Commonwealth) for advice. As in the New South Wales law, no prosecution can be started against anyone for a strike or a lockout without the consent of the court. Since this consent has never been given in the case of a strike, the law is scarcely more than a minimum wage law.

The scope of its power in relation to the state courts is, for us, the most interesting question. The law gives to the court power over "disputes extending beyond the limits of any one state"—except in regard to disputes in agricultural industries. Subsequent acts have attempted to enlarge its scope, but have been declared unconstitutional, and when Justice Higgins, the president, submitted a case to the high court, the rulings of the court were usually restrictive against the Commonwealth. Uncertainty has remained as to what is a "dispute" and what is really meant by "extending beyond the limits of one state." It is obvious that if a request for a change of wages paid by two different employers in two different states constitutes a "dispute extending beyond the limits of one state" the Commonwealth court can strip the state courts of any real power. Already the court has determined wages on the local tramways from Perth on the West coast to Brisbane on the East coast.

A curious distinction has been made by the high court, by

which wage-board decisions of Victoria are considered part of the Victorian law and have restrictive power over rulings by the Commonwealth Court of Arbitration, where applied within that state, while the awards of arbitration courts of the several states are not regarded as law and have no restrictive power. This led in 1912 to the employers of Victoria petitioning that the building trade laborers of that state be brought under a state wage board, as the latter were seeking, with the building laborers of other states, to come under the Commonwealth Court of Arbitration. The Labor Party stands committed to the abolition of state courts of arbitration, their place to be taken by district courts under the authority of the Commonwealth.

Unlike New Zealand, there can be no legal strike in Australia outside of Tasmania and Victoria, since the compulsory arbitration laws have "blanket" provisions against strikes and lockouts. But, with governments either purely labor or purely anti-labor, the administration of these laws seems to have been, at least in New South Wales, either absurdly flabby or absurdly frantic. Instead of the government acting as a judge, it becomes a plaintiff or defendant determining the administration of law.

More Commonwealth ministries have been wrecked on both sides of the question of "union preference" than on any other question. Union preference, which is used as a harmless bait in New Zealand to bring labor unions under the act, becomes a grave political question in the states and in the Commonwealth, where the vote of labor and its opponent is very close. New South Wales has adopted union preference in its compulsory arbitration acts. Rather curiously, Western Australia, with the strongest labor party of all the states, repealed, in 1912, the provisions regarding union preference which had existed in the act of 1902. The Commonwealth court has had the right to grant union preference, but Justice Higgins, although once a member of a labor ministry, granted union preference, not as in New Zealand in cases where there is a strong union, but only in cases where a union has been oppressed.

In most of the states, decisions are based on existing strength of the parties, and are similar, therefore, to decisions in a court of voluntary arbitration. Justice Higgins of the

Commonwealth court chose for his minimum for the lowest paid laborers not the customary wage, nor a wage based on the strength of the union, but a wage based on a standard of living. This was most sharply shown in the decision in 1914 in the case of the dock laborers, where probable annual earnings, taking into account fluctuations of employment, were taken as the basis for an hourly wage.[1] We have thus traveled far from voluntary arbitration or strikes, with wages determined by the strength of the two parties, far from minimum wages based on what the more reputable employers pay, to a determination of wages on a consumers' standard of living.

The recent history of the Commonwealth Court of Arbitration has been marked by more explicit definition of its powers and the establishment of precedents. Two amendments to the Commonwealth Act were made in 1915 and 1918. The earlier amendment enabled a justice of the high court to decide finally whether a dispute extended beyond the limits of any one state which was the chief limitation of the powers of the court of arbitration. The court affirmed the right of free bargaining in the case of workers refusing to accept hire at the minimum wage, when they believed their skill rated a higher wage. In the consideration of minimum wage principles during the war, the court continued its policy of basing the minimum on a standard of living. The tendency, however, was to make the wages of the skilled and unskilled workers meet; the basic wage was increased, but the secondary wage was increased only by the pre-war margin between the two scales, not proportionally. One of the most fruitful features of the court's power is its right to appoint "boards of reference," by means of which the meeting of representatives of unions with employers is encouraged. Of late, these "boards of reference" have tended to develop along the lines of the Whitley suggestions in Great Britain.

During the three years, 1917-1920, there were but four strikes without previous reference to the court. The miners' strike of October, 1916, was mainly political in its aspects, and could not be attributed to either the success or the failure of the act. In June, 1917, however, the glass-bottle makers struck without reference to the court, and only by the power of the

[1] *New Statesman*, June 6, 1914, p. 262.

court to call a compulsory conference were the unions penalized and the men forced back to work on the employers' terms. In the sympathetic strike of waterside workers in August, 1917, the court was powerless to act, inasmuch as the stoppage was not in direct violation of the terms of its award. The prime minister sought to cancel the registration of the union with the court, hoping thereby to kill the award under which it was working. The principle involved was whether the court had jurisdiction over a sympathetic strike extending beyond the limits of any one state. The settlement finally made by mediation of Justice Higgins with union leaders denied the court's jurisdiction over sympathetic strikes.[1] A recrudescence of this strike occurred in September, 1919. The union apparently harbored its grievance against the government for high-handed action in the previous dispute, and added to this grudge some of the "direct action" principles of syndicalists. The union announced its strike to the court twenty-four hours beforehand, but in attempts at settlement of wage demands the court twice used the compulsory conference method without success. The instance indicates that labor's opinion of the court is not unanimously favorable, nor is the court's compulsory power always effective in serious disputes.

During 1920, the Parliament passed legislation enabling the government to appoint special temporary tribunals for the settlement of particular disputes without recourse to the Court of Conciliation and Arbitration. As a protest against this legislation, Justice Higgins resigned after having been president of the court for fourteen years. In his statement of resignation he pointed out that there would be no coordinating authority, no appeal to the higher court, and the differing awards of the separate tribunals would create contrasts in conditions which would only make for more industrial troubles. These special tribunals would be responsible to the government, their decisions would necessarily be opportunistic, and each would endeavor to secure the continued operation of its particular industry at all costs. In Justice Higgin's opinion, these tribunals would not have the long-time point of view and judicial character of the higher court, which seeks the continuity of work

[1] H. B. Higgins, "A New Province for Law and Order," *Harvard Law Review*, January, 1919, pp. 189-217.

in all industries, and which realizes that a reckless concession made in one case will only multiply future troubles. In his opinion the creation of these special tribunals for particular disputes was a fatal injury to the public usefulness of the court.

This legislation, making possible the creation of special courts responsible to the political government, together with the resignation of Justice Higgins, seems to indicate that Australia's system of compulsory arbitration has become involved in politics. This fate probably follows from the fact that where compulsory arbitration is in force, the opposing interests are deprived of their economic weapons and in consequence they resort to political action.

c. Canada and the United States. In Canada and the United States we again contrast the situation of the classes. Australia has a very strong labor party. Labor in the United States has never been a chief minority party. Where it has been a straight conflict between labor on one side and the other elements of society on the other side, labor has been defeated at the polls. Again, in regard to unionization, the unskilled and semiskilled are unionized in but a few industries. Organized labor is, for the most part, organized skilled labor. Such labor is strong at industrial bargaining; it is weak only at the polls. It is therefore no blindness, but wise calculation, which has set the leaders of organized labor against government interference in industrial disputes. They could not count on controlling government, and they cannot predict what standard the government would use in its awards. Unions which have gained for their members the more desirable conditions of labor are not willing to risk what they have gained for a doubtful standard imposed by the outside public, which might take into account the average and not the exceptional condition of labor.

The employers, also, are afraid of compulsory arbitration. Through their voting rights alone they have even less power at the polls than the skilled workmen. Only by other means and by the aid of other classes can they control politics.

There is but one class which would be likely to gain by enforcing higher standards. It is the immense but miscellaneous class of unskilled and semiskilled men, and of women and children. They have no voice to make their wishes known.

Against the joint opposition of organized labor and capital, compulsory arbitration makes little headway in the legislatures, in spite of the agitation that follows every great strike. Only occasionally has it come within the zone of practical politics. One instance was when the anthracite coal strike of 1902 put the voluntary system to a considerable strain. Arbitration was accepted by the employers only after pressure was put upon them by the President of the United States. A second time was in 1920, when the Kansas agrarian legislature, at a special session called for the purpose, adopted the first real compulsory arbitration law in the United States.

In the report on the arbitration award governing the demands of the Eastern locomotive engineers in 1912, the chairman, representing the public, advocated a permanent wage commission and added: "Is it unreasonable to ask that men in the service of public utilities shall partially surrender their liberty in the matter of quitting employment, so that the nation as a whole may not suffer disproportionately?"[1] The sharpest criticism of this doctrine came from the minority report representing the engineers: "To insure the permanent industrial peace so much desired will require a broader statesmanship than that which will shackle the rights of a large group of our citizens."[2] When the Western railroad arbitration of 1915 resulted unsatisfactorily to the brotherhoods, the minority, representing them, protested that "no act by a governmental tribunal could more keenly bring home to the wage-earners of this country the consideration they might expect if boards under governmental supervision and control were to review and adjust their wages and working conditions on that basis." And so the matter in the main stands: the employers are dissatisfied with what they consider one-sided compulsory arbitration, the employees attack any greater measure of coercion.

One of the objections frequently raised against compulsory arbitration is its unconstitutionality in violation of the thirteenth amendment, in that it imposes involuntary servitude other than punishment for crime. This objection is probably

[1] *Report of the Board of Arbitration in the Matter of the Controversy between the Eastern Railroads and the Brotherhood of Locomotive Engineers*, 1912, p. 107.
[2] *Ibid.*, p. 123.

not sound. We have already seen [1] that quitting work collectively in pursuance of an unlawful agreement contains the element of conspiracy which makes a strike essentially different from the ordinary quitting of work. Such a concerted agreement may be enjoined and punished as contempt, and there are sufficient precedents in the decisions to warrant the constitutionality of imposing penalties, should a compulsory arbitration law be shrewdly drafted and popularly supported. It is not enough to raise the objection of constitutionality, for constitutions change with interpretation. The lasting objections must be found elsewhere.

While the United States has not gone very far with compulsory arbitration, and Canada has not adopted it at all, both countries have for several years maintained coercive features at three different steps in the procedure of governmental arbitration. These are compulsory investigation, the enforcement of awards which have been accepted by both parties, and the prohibition of sudden change of terms or sudden strikes or lockouts.

The first is for the sake of official and public information. Directly it can have no effect on the bargaining rights and the bargaining tactics of the two parties. It is embodied in some of the state laws of voluntary arbitration and was a part of the Federal Act of 1888.[2] When it was proposed in the Townsend Bill in 1904 to give that power again to a commission appointed by the President, the bill was defeated, for at the hearing the representatives of the American Federation of Labor, the railroad brotherhoods, and the American Anti-boycott Association appeared against it.

In the Canadian Industrial Disputes Investigation Act, collective bargaining itself was for the first time in North America made subject to the coercion of government. That act makes a sudden change of terms and a strike or lockout without sufficient notice unlawful in a certain class of industries affected with a public interest. The industries are public utilities and mines. In 1906, the year before its passage, there had been a prolonged strike in the Alberta coal mines which threatened a coal famine. The act makes it unlawful in such industries to

[1] See "The Law of Conspiracy," pp. 110-113.
[2] See "Mediation by Government," pp. 148, 149.

change the terms of employment without thirty days' notice, and requires that, if within that time appeal is taken to the minister of labor, the terms of employment shall remain the same pending an investigation. It is likewise unlawful to strike or lock out until after a hearing and findings by the investigating board. Then either a change of terms, or a strike, or a lockout is perfectly lawful. The act is coercive only against the sudden strike and the sudden change of terms. Upon application the minister of labor appoints a board to which the employees nominate one man, the employers another, and the two men nominate the chairman. In case of failure to nominate the minister does the selecting.

The success of the law seems attributable largely to the conciliatory efforts of the department of labor, to dislike for publicity rather than fear of penalty, and to the "existence of a means of negotiation rather than a means of restriction." From the inception of the act to December, 1916, there were 204 illegal strikes or lockouts, two of them lockouts. One hundred and seventy-eight of these stoppages occurred without either party seeking the aid of the act. An illegal strike or lockout under the law is action taken before reporting the dispute to the board, or before the investigation and report of a legally constituted board.

The employers and the workers have, on the whole, been favorable to the law. In 1923, however, the law was brought into the courts, and in January, 1925, the Privy Council found the act invalid on the ground that it contained provisions authorizing action by the federal authorities in regard to matters which, under the terms of the British North America Act, were within the legislative jurisdiction of the several provinces and not under the control of the Dominion Parliament. An amending act was immediately introduced by the Minister of Labor to limit the application of the act to matters not within the jurisdiction of the provinces. This amendment which became a law in May, 1925, enumerates the occupations of interprovincial commerce which are subject to the act.[1]

Following the Privy Council decision, the Province of Nova Scotia passed an Industrial Peace Act which reenacted as a provincial measure the Dominion Industrial Disputes Inves-

[1] Canada Department of Labor, *Labour Gazette*, June, 1925, pp. 557-558.

tigation Act which had been declared *ultra vires* as to intra-provincial matters. The Nova Scotia act, however, also contains features patterned after the compulsory arbitration laws of New Zealand and Kansas. It provides for a permanent arbitration commission with judicial powers which is to investigate and render decisions enforceable at law in industrial disputes in which conciliation has failed.[1]

The Canadian disputes act instantly appealed to the public and to the employers of other lands. Part of its machinery was adopted the following year (1908) in New Zealand. An act somewhat similar was passed in the Transvaal in 1909. Bills based on its principles were introduced into the legislatures of New York, Wisconsin, and California, but it was not until the upheaval in Colorado in 1914-1915 that a law was actually passed in the United States embodying restrictions on change of terms of employment and on strikes and lockouts.

The law of 1915 gave to the Industrial Commission of Colorado, among its other powers, the power to compel a hearing in the case of an industrial dispute, and to deliver an award, which, like those under the Canadian act, is not mandatory. As in the Canadian act, change of terms of employment, strikes, and lockouts are prohibited until after thirty days' notice and until after a hearing and award if such hearing is started within the time of notice. Going beyond the Canadian act, which is limited to public utilities and mines, the Colorado law covers all employees except those in domestic service, in agriculture, and in establishments employing less than four hands. The law was first invoked[2] when a large cracker company announced a decrease of wages to take effect the following week. Some of the employees struck and the commission ordered the employers to submit their proposed reduction to the commission and the employees to resume work. Both sides obeyed.[3] "No longer is a strike a private affair," was the editorial comment in a prominent Denver paper.[4] Continued experience under the law causes the industrial commission to report that it has amply accomplished the purpose for which it was enacted. The

[1] *Ibid.*, May, 1925, pp. 455-457.
[2] August, 1915.
[3] *Rocky Mountain News*, August 10, 1915.
[4] *Ibid.*, August 11, 1915.

provision requiring thirty days' notice before a change in terms of employment, "against which violent criticism has been directed, has saved the situation innumerable times." [1] During the year and a half ending with October, 1918, a total of 196 cases were recorded by the commission, which states that "there were not over half a dozen controversies or strikes occurring in this state since this commission has been in office which are not included" in this list. In connection with 145 of the 196 cases reported on, the statutory thirty-day notice was given; only nine strikes occurred without such a notice. Fifty-eight disputes were settled by an award of the commission or after conference with it, and seventy-eight by the employers and employees concerned, in many of which cases the joint conferences were suggested or directed by the commission. In five cases, commission awards were accepted by the employers but rejected by the men.

Since 1918, there have been comparatively few strikes, and the industrial commission expresses the opinion that, despite the continued opposition of organized labor to the act, the opportunity for conciliation provided by the waiting period is a help in preventing and settling disputes. The Kansas law of 1920 establishing compulsory arbitration created a "court of industrial relations," composed of three judges appointed by the governor for three-year terms. The manufacture of food products, the manufacture of "clothing and all manner of wearing apparel in common use by the people," the mining or production of fuel, "the transportation of all food products and articles or substances entering into wearing apparel or fuel," and all public utilities and common carriers as defined under the general statutes of Kansas, were declared to be affected with a public interest and therefore subject to supervision by the state "for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder, and waste, and securing regular and orderly conduct of the business directly affecting the living conditions of the people." In case of a serious controversy in any of the industries covered, the court of industrial relations was authorized on its own motion, or on complaint of any ten taxpaying citizens in the locality, to summon the parties before it and to investigate the conditions

[1] Industrial Commission of Colorado, *Second Report*, 1918, p. 99.

of the industry. The findings of the court were to state "specifically the terms and conditions upon which said industry . . . should be thereafter conducted." The court was to "order such changes, if any, as are necessary to be made in and about the conduct of said industry . . . in the matter of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage or standard of wages." The right of collective bargaining was expressly recognized, but strikes, picketing, boycotting, and similar acts to enforce labor's claims were forbidden. On the other hand, the discharge of employees for bringing controversies to the attention of the court, or for testifying before it, is prohibited, and the right of workmen to quit their employment individually was not restricted. In case of actual suspension or limitation of operation in any industry covered by the act, the court was to take it over and operate it during the emergency.

The Kansas Industrial Relations Act has been one of the most intensively litigated pieces of legislation in recent years. Both employers and workers were unfavorable to the act and both have contested it in the courts. In 1923, the United States Supreme Court declared unconstitutional, at least for industries which are not public utilities, the provisions undertaking to give the industrial court power to fix wages.[1] Fixing of wages by compulsory arbitration in the packing industry was held inconsistent with the due process of law clause of the fourteenth amendment. In April, 1925, the law was again passed on by the Supreme Court.[2] The court unanimously held that the meat-packing industry was not affected with a public interest, and the fixing of hours of work through a system of compulsory arbitration by a state agency was described as infringing the liberty of contract and rights of property guaranteed by the due process of law clause of the fourteenth amendment.

The industrial court was abolished by an act of the Kansas legislature effective March 19, 1925, and the powers and duties of the court were transferred to a public service commission

[1] Wolff Packing Co. *v.* Court of Industrial Relations, 262 U. S. 522, 43 Sup. Ct. 630 (1923).

[2] Wolff Packing Co. *v.* Court of Industrial Relations, 267 U. S. 552, 45 Sup. Ct. 441 (1925).

consisting of five members appointed by the governor by and with the advice and consent of the senate. In the light of the Supreme Court decisions, it would seem that this public service commission will have functions somewhat similar to those that were exercised by the United States Labor Board, *i.e.*, powers to investigate, to formulate suggested remedies and give them publicity but no power to enforce its findings.[1]

4. Unions of Government Employees

With the broadening scope of the state as an industrial employer, the collective bargain is, in some cases, entered upon even by the government with its employees. Here it presents a peculiar problem. The state[2] employs permanently larger bodies of workers than any other single employer.[3] It is not subject to the competition that limits the private employer in his bargain with labor, and it is the medium through which the employee with the suffrage becomes in a measure his own employer. In such states as allow practically universal suffrage it then seems less necessary for the public employee to use the weapon of strike or boycott employed by the private worker in his struggle for better wages and working conditions.

(1) *Recognition of Unions*

The right of the public employee to strike is not conceded by government, although in many countries the right of government workers to organize is not denied them. Russia, under the old régime,[4] Turkey,[5] and Roumania[6] forbade concerted action on the part of government employees under penalty, and even in republican France public strikes are forbidden and pun-

[1] United States Bureau of Labor Statistics, *Monthly Labor Review*, June, 1925, pp. 130-136.

[2] Meaning the governmental unit, national, state, or municipal.

[3] The United States government on June 30, 1914, had in its employ 482,721 persons (United States Civil Service Commission, *Report*, 1915, p. 6), approximately the same number as employed in the entire iron and steel industry in the United States. To this number should be added the employees of state and local governments.

[4] Imperial ukase of December, 1905 (*Bulletin of the International Labor Office*, Vol. I, 1906, p. 51).

[5] Act of November 6, 1908 (*Ibid.*, Vol. III, 1908, p. 331).

[6] Decree of December 19, 1909 (*Ibid.*, Vol. V, 1910, p. 437).

ished,[1] while the right of public employees to organize is at least doubtful and certainly restricted.[2] Even in the United Kingdom, in Australasia and the United States, where government employees are nominally allowed to combine, trade-unionism among public employees is not freely tolerated, there being still a general sentiment that opposition of public employees to the government savors strongly of insubordination and unpatriotism.[3] This feeling became very manifest in the summer of 1919, when efforts of the police and fire departments to organize in several American cities were met by the almost unanimous opposition of the authorities. In Boston the discharge of several policemen for joining a union affiliated with the American Federation of Labor led to a strike in which the men were finally defeated and a new force was organized. About the same time, after police strikes in London and other centers, the British Parliament amended its police law to prohibit constables in England and Wales from joining or remaining members of any trade union intended to "influence the pay, pensions, or conditions of service of any police force."[4] Canada also, by a cabinet order, prohibited government employees from joining labor unions. The opposition to organization among civil employees is especially strong in France, where unionism has come to be regarded as a real danger, due largely to the great postal and railway strikes.[5] At the same time the feeling of the employees, as expressed in the international conference of public employees (August, 1907), is that the employee, even on public works, has a right to organize and strike as a means of obtaining desired concessions as to condi-

[1] Order of March 18, 1909, relating to the organization of disciplinary committees of the outdoor staffs of the postal and telegraph service, providing penalties for "collective or concerted refusal" on the part of the staff. (*Ibid.*, Vol. IV, 1909, p. 293.)

[2] The minister of public education maintained in 1912 that under the law of 1884, which gave legal standing to labor unions, syndicates of teachers were not recognized, and such a syndicate was dissolved by the French government. See *American Federationist*, February, 1913, p. 136.

[3] *New Statesman*, May 8, 1915, special supplement on "State and Municipal Enterprise," p. 22.

[4] 9 and 10 George 5, C. 46 (1919).

[5] An account of the postal strike and its cause may be found in J. H. Harley, *New Social Democracy*, 1911, pp. 122-143. Also see Graham Taylor, "Unionizing Government Employees," *The Survey*, May 8, 1909, p. 226.

tions of employment.[1] In the United States, in 1902, the President by executive order, amended in 1906, forbade all government employees directly or indirectly to solicit an increase of pay or to influence legislation in their behalf, save through the heads of departments in which they served. The protest of the unions [2] led to the act of 1912, adopted as a rider to the Post Office Appropriation Act,[3] which permits post office employees to petition Congress, but forbids them to affiliate with any outside organization which imposes upon them an obligation to strike, or purposes to assist them in any strike against the government.[4] The executive order applies only to the activities of unions of public employees influencing Congress. It does not prevent organizations within the department nor collective bargaining with the department. Such collective bargaining exists in a crude form in departments requiring skilled labor, and, in the case of the War Department, a complete scheme of arbitration has been worked out for the arsenal at Watertown, Mass., for all mechanical employees. This provides for a mediation board of an equal number of members elected by the employees and officers appointed by the commanding officer. There is a supreme mediation board at Washington, including representatives of the national unions to which the arsenal workers belong, and officers appointed by the Chief of Ordnance. Appeal lies to the Secretary of War.[5] A similar arrangement has been worked out in the street-cleaning department of New York in 1896.[6] A further development in the direction of employees' representation in the administration of government enterprises was introduced toward the end of 1918 in the federal arsenal at Rock Island, Ill. The men selected an advisory committee to cooperate with the War Department, were allowed to choose their own foremen, and had a voice in fixing piecework prices. The experiment resulted, according to

[1] United States Department of Labor, *Bulletin No. 88,* May, 1910, p. 867.

[2] See *American Federationist,* January, 1915, p. 28; also January, 1912, p. 36; January, 1914, p. 51.

[3] *Congressional Record,* Vol. XLVIII, 1912, p. 11819.

[4] United States, Laws 1912, C. 389, Sec. 6.

[5] See O. O. 10225-10582, "Instructions in regard to Hearings of Grievances, issued January 9, 1915, by the Chief of Ordnance to the Commanding Officer, Watertown Arsenal."

[6] See Commons, *Labor and Administration,* 1913, pp. 108-113.

an official statement, in reduced expenses, increased production, and the development of a spirit of hearty cooperation among the workers.[1]

Other governments have found it necessary to adopt forms of collective bargaining with employees. In New Zealand the act of 1908[2] provides that any society of railway employees may register and become officially recognized by the government. It may then enter into an "industrial agreement" with the minister of railways and, by registration, the articles of agreement are brought under government enforcement. Any appeal goes before the court of arbitration, consisting of a judge and representatives of the government and employees. After a hearing the award takes the form of a new compulsory agreement or an enforcement of the old. There are appeal boards for postal and telegraph employees,[3] tramway employees,[4] and public-school teachers; and any ten or more teachers may organize a society, which, like the railway organization, registers and has corporate existence.[5]

The French plan for railway administration does not recognize an employees' union as such, but goes farther than the New Zealand scheme in arranging for cooperation between government and employees. Officials and workers are represented on the various committees by their chosen delegates. Thus, in the councils and grades committee they help prepare reports and lists of premiums and promotions. As delegates they are part of the council of inquiry whose duty it is to express an opinion on all important questions of discipline submitted by the general manager.[6] In addition there are the representative district councils, which act as buffers between the railway administration and the employees, make explana-

[1] John A. Fitch, "Manufacturing for Their Government," *The Survey*, September 13, 1919, pp. 846-847.

[2] *Bulletin of the International Labor Office*, Vol. III, 1908, p. 312.

[3] Act of October 24, 1894. New Zealand Statutes, 1894, Post and Telegraph Department Act.

[4] An act to amend the Tramways Act, 1908, New Zealand Statutes, 1910, p. 370.

[5] Act of October 31, 1895, New Zealand Statutes, 1895. School teachers in the United States have also organized and affiliated with a central federation. (*American Federationist*, January, 1903, p. 15.)

[6] Report of State Railways Administration for 1909. (*New Statesman*, May 8, 1915, special supplement on "State and Municipal Enterprise," p. 25.)

tions, and administer necessary reprimands. Officials no longer reprimand workmen. Above the district councils is the *Conseil de Reseau*,[1] the supreme advisory board of the whole state railway system. Of the twenty-one members appointed by the minister of public works, four are working employees.[2]

In the Prussian railway system, autocratic as it is, there have been since 1892 a series of advisory committees appointed by the minister of public works, whose express mission it is to smooth the working of the system by advising on all possible points of friction between management and operatives.[3] In the Swiss administration, it is said to be an invariable custom for the general secretary of the railwaymen's trade union to be appointed a full member of the board of administration, the supreme governing authority of the railway system.[4]

The foregoing are instances of formal agreements sanctioned by law or established by administrative order. Far more extensive than these formal agreements is the unofficial recognition of unions, especially in England and the United States, where the head of the department deals with the representatives of the union and then issues orders conforming to the agreement but not mentioning the union. In this respect the collective bargain is similar to that of certain large railway systems in the United States which nominally do not recognize the railroad brotherhoods, but actually issue orders, through the general manager, to which the unions have previously consented.

The advantage to government of formal recognition of unions consists in establishing permanent boards of arbitration through which all grievances take their regular course. Without such board, the unions, through political influence, go over the heads of the departments to the legislative branch of government. This is proper enough, and, indeed, is inevitable under universal suffrage, no matter what restrictions the administra-

[1] Instituted by ministerial decree September 24, 1911. (*Ibid.*, p. 25.)
[2] *New Statesman*, May 8, 1915, special supplement, p. 25, from Emil Davies, *The Collectivist State in the Making*, 1914.
[3] *New Statesman*, May 8, 1915, special supplement, p. 25. See also E. S. Bradford, "Prussian Railway Administration," *Annals of the American Academy*, Vol. XXIX, 1907, p. 310.
[4] *New Statesman*, May 8, 1915, special supplement, p. 25.

tion attempts to place upon them. But, with permanent boards of arbitration, practically all grievances and demands of the union can be settled within the department, leaving to the legislature (municipal, state, or federal) only the general policy of establishing standards of hours and wages [1] to be enforced through the arbitration boards.

Outside the compulsory systems of Australasia, the final appeal from arbitration boards lies with the head of the department. In the war department it is the secretary of war. In the street-cleaning department it is the commissioner. This is essential in any voluntary system of arbitration in public employment. The unions retain the right to strike if they are not satisfied with the arbitration, and therefore the head of the department must finally decide as against a strike, in case arbitration fails.

Another distinction between unions of public employees and those that deal with private employers is the attitude toward the closed shop. Government cannot discriminate between citizens, as can private employers, and must maintain the open shop.[2] But, since government is not forced by competition to cut wages or lengthen hours, the unions do not need the protection which the closed shop gives them. Yet, under the compulsory systems of New Zealand and New South Wales, a preferential union shop is maintained, which approaches the closed shop.[3]

In the United States there is a semblance of union preference in the statutory requirements of three states [4] to the effect that the label of the typographical union be affixed to all public printing. In Maryland, however, this law seems to have been disregarded,[5] while in the other states there have been no court decisions supporting the law, although it has been observed. In at least eight other states there have been court decisions adverse to discrimination in favor of organized labor, in regard to either employment on public works or the use of the union

[1] See "The Minimum Wage," p. 207; "Hours of Labor," pp. 303, 304.

[2] See decisions below.

[3] New Zealand, act of 1908, *Bulletin of the International Labor Office*, Vol. III, 1908, p. 312. New South Wales, industrial arbitration act, Acts of Parliament, 1911-1912, No. 17.

[4] Maryland, An. C. Sec. 9, Art. 78; Montana, R. C. 260; Nevada, R. L. Sec. 4309.

[5] Reports of state officials do not carry the label.

label on public printing,[1] on the ground that the restriction of employment thus imposed is unconstitutional.

(2) *Cooperative Employment*

An official recognition of organizations of public employees is found in the cooperative employment system. There are two principal methods, the first of which is the cooperative day-labor system, as applied in New Zealand.[2] This is a time and piecework system under which men out of employment arrange themselves in small groups, averaging about fourteen (the groups were at first, and occasionally still are, larger), select one or two "headmen," and enter into contracts with the government for sections of public work at "schedule rates" based on the estimates of government engineers in charge of the work. The plan seems to have worked well in New Zealand, but not so well in New South Wales, where it has been confined to the lowest and least efficient stratum of workers. Under the plan the government is responsible for the checking up and actual direction of the work. Evidently the group is not a real labor union.

The second form is found principally in France and Italy,[3] where workmen organize their own groups and, as such, contract for government work. The group constitutes, therefore, not a labor union, but a union of labor contractors. The officials of the government are not in charge of the work, but they turn it over to the groups, the plan being a modification of the competitive contract system rather than a variety of direct employment. The government authorities favor these societies in the placing of contracts, and the result has been a steady and appreciable growth in their number and undertakings.

[1] Illinois: Adams *v.* Brenan, 177 Ill. 194, 52 N. E. 314 (1898); Holden *v.* Alton, 179 Ill. 318, 53 N. E. 556 (1899); Fiske *v.* People, 188 Ill. 206, 58 N. E. 985 (1900). Iowa: Miller *v.* City of Des Moines, 143 Ia. 409, 122 N. W. 226 (1909). Tennessee: Marshal & Bruce Company *v.* Nashville, 109 Tenn. 495, 71 S. W. 815 (1902). Michigan: Lewis *v.* Detroit Board of Education, 139 Mich. 306, 102 N. W. 756 (1905). Georgia: Atlanta *v.* Stein, 111 Ga. 789, 36 S. E. 932 (1900). Nebraska: Wright *v.* Hoctor, 95 Neb. 342, 145 N. W. 704 (1914). Alabama: Inge *v.* Board of Public Works, 135 Ala. 187, 33 So. 378 (1902). Ohio: Cleveland *v.* Clements Bros. Construction Co., 67 Ohio St. 197, 65 N. E. 885 (1902).

[2] Great Britain, Board of Trade, Labor Department, *Report on Co-operative Contracts Given out by Public Authorities to Associations of Workmen, Parliamentary Papers*, Vol. LXXX, 1896.

[3] Victor von Borosini, "The Italian Triple Alliance of Labor," *American Journal of Sociology*, Vol. XIX, 1913-1914, p. 204 ff.

CHAPTER IV

THE MINIMUM WAGE

Minimum wage legislation marks a new stage in the long line of attempts to equalize the power of employer and employee in making the wage bargain. In contrast with conciliation and arbitration, either voluntary or compulsory, which take place only after a demand has been made by one party and refused by the other, minimum wage laws seek to regulate the wage rate before any dispute over the terms of the wage bargain has arisen. Moreover, interference by the state between the parties to the wage bargain through conciliation or arbitration usually implies the organization of the workers and the existence of collective bargaining.[1] But in any modern industrial community, large numbers of unorganized workers are found, still bargaining individually, employed at low wages and apparently unable to make any effective efforts themselves to improve their condition. If they are to be helped toward an equality in bargaining power with the employer, the state must take the initiative. This it does by setting standards below which wages may not be depressed—in other words, by passing minimum wage legislation.[2]

Minimum standards for safety and sanitation have been enacted in many states and the maximum length of the working day has often been fixed. Such safeguards have long been familiar and are generally accepted as necessary and beneficial to the health and welfare of the workers. There exists also a considerable group of laws which determine certain conditions of the wage *payment*. For instance, the weekly payment of wages may be required or payment in "store orders" may be forbidden, as described in Chapter II; but any legislative inter-

[1] The industrial courts of Europe, previously described, employ conciliation in both collective bargaining and individual contracts.

[2] Modern minimum wage legislation is not comparable to the mediæval fixing of wages by justices of the peace which prescribed not a minimum, but the actual rates to be paid. See "Coercion by Government," p. 161.

ference with the wage *rate* was long in making its appearance. Work may be done under safe and sanitary conditions for hours not too long, and payment of wages may be prompt and regular, but if the amount received is too small to secure the necessaries of life, the worker's health and welfare are menaced. Therefore, the same motives which have caused most of our states to establish minimum standards to guard the worker against unsafe and unsanitary conditions have caused many of them to attempt to set up standards for protection against the evils of low wages.

1. Economic Basis

That a large proportion of unskilled workers are paid wages far too low for decent self-support is a fact confirmed by many wage investigations and well known to those even slightly familiar with present-day industrial conditions.

(1) *Low-wage Scale*

Even before the era of unprecedentedly high prices ushered in by the war, it was the concensus of expert opinion that a weekly wage of $8 or more was necessary under urban conditions for the maintenance of a self-supporting woman in simple decency and working efficiency, and that a man with a wife and three children required at least $15 to $20 weekly for their proper support.[1] Yet a study made at that time of women's wages in the United States concluded that 75 per cent of female wage-earners received less than $8 weekly, 50 per cent less than $6, and 15 per cent less than $4, and that these wages were further reduced approximately 20 per cent through lost time and unemployment.[2] The pay of unskilled male workers was at a correspondingly low level. Streightoff, in his discussion of American standards of living, estimated that at least 6,000,000 adult men, married as well as single, received less than $600 a year, or $12 a week.[3] A little later the New York State Factory Investigating Commission examined the

[1] See Howard B. Woolston, "Wages in New York," *The Survey*, February 6, 1915, p. 510.

[2] Charles E. Persons, "Woman's Work and Wages in the United States," *The Quarterly Journal of Economics*, February, 1915, p. 232.

[3] Frank H. Streightoff, *Distribution of Incomes in the United States*, 1912, p. 137.

pay-rolls of over 2,000 stores and factories during the fall, winter, and spring of 1913-1914. Out of 57,000 women and girls, approximately 34,000, or 60 per cent, earned less than $8 in a typical week. Seven thousand out of 14,000 married men, or 50 per cent, earned less than $15.[1]

During the war, the wage level was materially raised, but, owing to the unprecedented rise in prices that accompanied the change, it is doubtful whether real wages were materially altered for the better, except perhaps in a few war industries and in certain occupations covered by especially liberal government wage awards. The United States Bureau of Labor Statistics estimated that the cost of a family's living increased 80 per cent in the chief shipbuilding centers of the United States between June, 1914, and June, 1919, and 70 per cent in other localities. The "National Industrial Conference Board," which is a federation of several large employers' associations, and likely, therefore, to be conservative in its estimates, put the increase at 71 per cent for the similar period of June, 1914, to July, 1919. According to the price statistics just quoted, the minimum "living wage" for a self-supporting woman, if assumed to be $8 a week in 1914, was $14 in 1919. It was, in fact, estimated to be $15 by the Consumers' League of New York City in January, 1919, and $16.50 by the District of Columbia Minimum Wage Commission in July of the same year.

On the average, wages had failed to reach these standards in 1919, while prices showed few signs of falling, in spite of anti-"high cost of living" campaigns. The New York Industrial Commission, securing between November, 1918, and January, 1919, figures on the earnings of 32,000 women in the same industries which had been covered by the Factory Investigating Commission in 1913-1914, found that 60 per cent of those in factories and 61 per cent of those in stores still received less than $14 a week.

In 1923, with prices still going up, a similar investigation by the Commission showed that 57 per cent of the factory women in four of the largest industries in New York were getting less than $16 per week. Similar investigations in ten

[1] Howard B. Woolston, "Wages in New York," *The Survey*, February 6, 1915, p. 510.

states during the period of 1920-1924 by the federal Women's Bureau showed such low averages as $14.95 in the important industrial state of New Jersey, $11.98 in Texas, $12.70 in Kansas, and for white workers $12.65 in Missouri and $11.60 in Arkansas.

Investigations by the United States Department of Labor show that the changes in the cost of living and in wage rates kept a fairly even pace up to 1914, but between that year and 1920, the cost of living increases far outstripped wage increases. Workmen were compelled to reduce their standard of living in order to meet the 74.4 per cent increase in the cost of living with a wage rate increase of only 32.7 per cent. This wage increase applied only to the *rate* so that all unemployment due to sickness, lack of work, or other reasons still further reduced the family income. In 1920, wage rates took an upward turn, and by 1925 they were 37.1 per cent above the 1913 level, but the cost of living had risen 73.5 per cent on the same basis.

It seems, then, no exaggeration to say that the majority of low-skilled industrial workers in the United States receive wages too small for decent self-support. This fact explains the demand for minimum wage legislation as necessary to social welfare.

(2) *Economic Weakness of Low-paid Workers*

The almost entire absence of strong labor organizations and collective bargaining among this group of wage-earners is an important factor in producing the low-wage scale. Many are women who are often members of a family group, unable to move from place to place in search of better opportunities, but remaining at home to overcrowd the few lines of work available in a given locality. Then, too, the majority of women workers are young and inexperienced, and their frequent withdrawal from industry on marriage makes them look upon their work as only temporary. On the whole, it has been extremely difficult to form stable unions among women workers. Experience both in England and in this country shows that organization among low-skilled men workers is almost equally difficult. In the absence of collective agree-

ments it has sometimes been possible to compel the workers to keep their wages secret. An Oregon department store, for instance, required each applicant for employment to sign an agreement which included a promise to "keep my salary confidential."[1] Such secrecy obviously makes it easier to depress wage scales. Under the circumstances, it is also not surprising that among this group of workers the relation between wages and productivity is not traceable, but that "there are also great differences in wages for work that is apparently the same. Some firms pay constantly 25 per cent more than their rivals for similar operations."[2] In the United States the situation, until the outbreak of the European War, was further complicated by the stream of immigration, which furnished an abundant supply of cheap labor and which put still another barrier, in the shape of divergent language and customs, in the way of union organization.

Another reason for the low-wage scale, largely the result of the first, is the cutthroat competition of the workers for work. Among the unskilled, unorganized workers, the wage that the cheapest laborer—such as the partially supported woman, the immigrant with low standards of living, or the workman oppressed by extreme need—is willing to take, very largely fixes the wage level for the whole group.

Moreover, a socially undesirable type of competition between employers flourishes when the bargaining power of employees is weak. The encouragement of superior ability and invention has always been pointed out as one of the chief advantages gained by the community from the competitive system of production. When an employer can hire workers for practically his own price, he can be slack and inefficient in his methods, and yet, by reducing wages, reduce his cost of production to the level of his more able competitor.

Minimum wage legislation, therefore, is designed to answer the demands of social policy in two ways. By setting a barrier below which wages may not fall, it lightens the pitiful poverty and prevents the degeneration in body and spirit of those

[1] *Report of the Social Welfare Committee, Consumers' League of Oregon*, 1913, p. 26.

[2] *Fourth Report of the New York Factory Investigating Commission*, 1915. "The Confectionery Industry," Vol. II, p. 312.

forced to live on a wage too small to supply the necessaries of life. Competition among them no longer takes the form of offering to work for lower wages, but that of developing greater efficiency. At the same time, employers are forced to compete in efficiency of management, thus securing for society at large the many advantages of constantly improved methods of production. Minimum wage laws attempt neither to destroy competition nor to fix wages by law; they merely seek to set the lower limits to both in the interests of society as a whole.

2. Historical Development

(1) *Australasia*

Australasia is the birthplace of minimum wage legislation. Though it is a new and prosperous country, as long ago as the 'eighties the sweating system, with its evils of low wages, long hours, and unsanitary conditions, was discovered to be alarmingly prevalent. The *Age,* the leading Melbourne newspaper, carried on a crusade against these conditions, and a royal commission was appointed whose report in 1884 showed that hours were excessive and that wages were constantly reduced by the miserable rates paid to home workers. Public indignation was aroused until finally determined efforts were made to overcome these evils.

In 1894, New Zealand passed a law providing for the compulsory arbitration of labor disputes, which, while primarily intended to preserve industrial peace, may also be used for the prevention of sweating. The district conciliation boards established by this law have authority to fix minimum wages, and, if sweated workers want their conditions improved, they need only file a statement of their claims in the office of the nearest conciliation board. By means of this machinery, underpaid workers, men more often than women, have secured wage increases.

The first Australasian law, however, whose main purpose was to end sweating, was passed by Victoria two years later; and since it is the Victorian method which Great Britain and the United States have adopted, the system deserves consid-

eration at length. The public feeling against the sweating system in Victoria had resulted in the formation of an Anti-sweating League. Largely as a result of the league's efforts and in spite of bitter opposition from the employers under the leadership of the Victorian Chambers of Manufactures, Victoria passed the first minimum wage law in 1896. Sir Alexander Peacock, originator of the system and later minister of labor in Victoria, has written: "It was alleged, first, that all work would be driven out of the country; secondly, that only the best workers would be employed; and thirdly, that it would be impossible to enforce such provisions at all. . . . The government, however, managed to carry the bill, and the wage-board system was inaugurated."[1]

The law required that representative boards fix minimum wages in certain industries designated by the legislature. Moreover, being frankly an experiment, the act was to be enforced for only four years. Wage boards were first appointed in the six especially sweated trades of boot-making and baking, which employed mostly men; clothing, shirt-making, and underclothing, which mostly employed women; and in furniture-making, in which the competition of Chinese labor was depressing wages. In 1900, when the first minimum wage law came to an end, the government brought in a bill providing for the extension of the wage-board system to other trades. The Victorian Chamber of Manufactures protested violently, urging, and with good reason, that the government's proposal meant the extension of the system to trades in which there was no evidence of sweating. The government, however, showed that it had received a number of applications from employers, asking for the appointment of special boards, and that sweating had disappeared in the trades in which boards had been established. Accordingly, the bill was passed and an extension of the system was begun, which continued from year to year until, at the end of 1916, 236 separate boards had been appointed, fixing minimum wage rates for 150,000 employees in a state whose total population is less than a million and a half. Minimum wage rates have been established for

[1] M. B. Hammond, "The Minimum Wage in Great Britain and Australia." *Annals of the American Academy of Political and Social Science*, July, 1913, p. 28.

all the important manufacturing occupations in the cities and also for street railways, mercantile and clerical employments, mining, and even for certain agricultural workers. The wage-board system is no longer regarded as an emergency measure intended to secure a living wage where conditions are exceptionally bad, but as a satisfactory method of fixing the standard wage in any trade. The act was again renewed in 1903, and in 1904 was made permanent. While the scope of the law has been widely extended, the opposition of the employers has decreased, until in April, 1912, M. B. Hammond, of the Ohio Industrial Commission, as a result of first-hand investigations, reported that both employers and employees "are now practically unanimous in saying that they have no desire to return to the old system of unrestricted competition in the purchase of labor." [1]

South Australia, Queensland, New South Wales, and Tasmania, between 1900 and 1910, also adopted minimum wage legislation, but in close relation to their systems of compulsory arbitration.[2] In South Australia, Queensland, and New South Wales, "arbitration courts," with coercive powers in settling labor disputes, serve as courts of appeal from the decisions of minimum wage boards. Tasmania forbids strikes wherever the award of a wage board is in force. From the first, all these states made minimum wage legislation applicable to practically the whole range of employment and not merely to sweated trades.[3]

(2) *Great Britain*

One of the most important developments in the English social reform movement during the early years of the twentieth century was the acceptance of minimum wage legislation as a practicable policy. While twenty years ago the fixing of minimum wage rates by law was apparently outside the realm of practical politics, it is advocated in Great Britain to-day not

[1] *Ibid.*, p. 35.
[2] See "Development of Coercive Intervention," pp. 173-177.
[3] For later developments, see pp. 208-209. See also three articles by Dorothy Sells, *International Labour Review*, October, November, and December, 1924.

only by the Labor Party, but also by the Liberals and an influential group of Unionists.

Among the chief reasons for this development of public policy was the increased public knowledge of conditions among sweated workers. Investigations showed that large numbers of low-skilled unorganized workers were receiving less than the wage necessary for the maintenance of mere physical efficiency. Attempts were made to extend trade unionism among them, so that they might raise their wages as more skilled workers had done, by collective bargaining. But the formation of strong unions among these sweated workers was generally found to be impossible. The market for their labor was chronically overstocked and the struggle for bare existence was too severe to permit the development of stable organizations. The public was aroused to this menace of insufficient wages, which its victims themselves seemed powerless to remedy, mainly through the efforts of the National Anti-sweating League, which, with the Labor Party and certain other organizations, vigorously urged the adoption of minimum wage legislation. The agitation resulted first in a parliamentary inquiry and finally, in 1909, in the passage of a trade boards act, modeled on the Victorian statute, which went into effect the following year.

This law provided that wage boards may be established by order of the board of trade, subject to ratification by Parliament, for all employees in any industry in which the prevailing rate of wages is "exceptionally low as compared with that in other employments."[1] The first four trades regulated were tailoring, paper-box-making, the finishing of machine-made lace, and the manufacture of certain kinds of chain—industries which employed altogether about 250,000 operatives. By 1913 the successful operation of the law was so generally recognized that the formation of boards was ordered in five additional trades: sugar confectionery and food-preserving, shirt-making, certain kinds of tailoring, hollow-ware-making, and cotton and linen embroidery, employing nearly 150,000 more workers. The trades covered employ chiefly women, and before regulation the wage conditions were flagrantly bad.

[1] Trade Boards Act, 9 Edw. 7, C. 22, Sec. 1 (2).

The first extension of the wage-board system outside the sweated trades was also exceptional, but for an altogether different reason. There had been great unrest among the coal miners during the winter of 1911-12, culminating in a strike in the spring of 1912 which paralyzed industry. One of the men's principal demands was a flat rate weekly minimum wage. In the interests of industrial peace the government was forced to yield to the principle of this demand by passing a measure establishing representative district boards to fix minimum wages and other working conditions. While the operation of this act is said to have proved less satisfactory than the workings of the trade boards, it presents the issue of wage regulation in a wider form, not simply as a means of protecting the sweated workers at the very bottom of the industrial system, but as a supplement to voluntary collective bargaining for a comparatively well-placed economic group, the skilled men workers in a well-organized trade.

Up to the outbreak of the European War, then, English minimum wage legislation had reached some of the hardest pressed and some of the most fortunate groups of industrial workers. Throughout the war, numerous adjustments were made in the awards for the nine sweated trades which had been dealt with under the original act, but the increases hardly kept pace with the ever-soaring cost of living, the boards increasing rates only "by so much as they thought the industries concerned would be able to support after the war." [1] But in the latter years of the war, two important extensions of minimum wage legislation were made, in part with a view to stabilizing wages during the transition from war to peace, which went far toward repeating in England the line of development which had been followed in Australia, and which transformed the trade boards from a special device for remedying unusually bad conditions to a common method for fixing wage standards for all wage-earners. One was an amendment to the Trade Boards Act which, in brief, provided that boards to fix minimum wages might be formed wherever

[1] G. D. H. and M. I. Cole, *The Regulation of Wages during and after the War*, p. 4.

earnings were "unduly" low,[1] instead of "exceptionally" low, as under the original law. Before the war, the general wage level had been so low in certain groups of occupations that it was often difficult to prove that they were "exceptionally" so in cases where it was desired to take action. Provision was also made for having the awards come into force more quickly and for removing various administrative difficulties which had been experienced. The amending act likewise made the boards a possible instrument for industrial self-government by empowering them to make recommendations to government departments concerning improvements in industrial conditions in their trades and by requiring the government to consult them on industrial questions affecting the workers whom they represent. Following the signing of the armistice, the establishment of new trade boards proceeded rapidly, and by September, 1919, they were in operation in six additional industries, and in process of organization in nine more. In 1923, the act was extended to include Northern Ireland, and by the end of 1925 practically all of the important industries employing women and children in Great Britain had been brought under the Trade Boards Act.

The other important extension of the minimum wage principle was the establishment of a minimum wage for agricultural laborers in connection with the Corn Production Act. The main purpose of this act was the stimulation of grain production through guaranteeing farmers a minimum price for their wheat for a considerable term of years. A demand was then made that wages in turn be guaranteed. Under this act the wage boards had, by the autumn of 1919, fixed minimum rates for men and women, boys and girls, through practically the whole of England and Wales.

The Corn Production Act was repealed in 1921, and wages were regulated by voluntary conciliation committees. But discontent over low wages and long hours finally resulted in the Agricultural Wages Act of August, 1924, which provides a central board with forty-seven local committees covering England and Wales.[2]

[1] 8 and 9 George 5, C. 32 (1918).
[2] Great Britain, Ministry of Labor, *Labour Gazette*, August, 1924, p. 278.

(3) *Other Countries*

Minimum wage legislation has been adopted in all the leading Canadian provinces,[1] in most of the larger European countries, in Argentina and Uruguay and, in 1925, in South Africa. The administrative machinery is generally similar to that adopted by Great Britain and usually applies to women and children. In Canada, the laws do not apply to boys. British Columbia in December, 1925, enacted a law providing for adult male employees generally minimum wages to be determined through investigations by the Board of Adjustment. Exceptions are made for farm laborers, fruit pickers and packers, fruit and vegetable canners, and domestic servants.[2] In Norway,[3] all persons in certain industries are covered. Most of this foreign legislation applies to specified groups of workers, especially home workers and agricultural laborers, where collective bargaining cannot easily be enforced.

In addition to the development in Australia, already noted, in several European countries during and since the war the family wage system has been adopted for certain industries. Under this plan, a basic wage is allowed each adult male worker, with a supplementary allowance for dependent members of his family.[4] This plan is usually operated by individual employers or by groups through an "equalization fund," but in some instances the state governments cooperate either by direct participation or by supervision.

(4) *The United States*

In America, a widespread demand for minimum wage legislation dates back to about 1910. Two factors contributed to the rise of popular sentiment in favor of the legislation at this time. One was the increased knowledge of conditions among sweated workers, resulting from such investigations as that of the federal Bureau of Labor on *Conditions of Woman and Child Wage-earners in the United States.* The other was

[1] J. W. McMillan, in *International Labour Review,* April, 1924, p. 507.
[2] Canada, Department of Labor, *Labour Gazette,* January, 1926, p. 17.
[3] Frederik Voss, in *International Labour Review,* December, 1925, p. 799.
[4] Paul Douglass, *Wages and The Family,* Chicago University Press.

the enactment of the British Trade Boards Act. In public employment, to be sure, wages in America had for several years been regulated both by state laws and by city ordinances. Most commonly these regulations fix the wage rate [1] or require that "prevailing rates" be paid, which are usually interpreted as union rates when a union exists in the locality. Several statutes and ordinances, however, establish a true minimum wage. For example, California provides that the minimum wage for all public employees except those in public institutions shall be at least $2 a day.[2] Massachusetts stipulates that "women cleaners and scrubwomen" employed by Suffolk County may be paid not less than $8 a week.[3] In 1913 Spokane, Wash., established by popular vote a minimum wage of $2.75 a day on public work, and on January 2, 1914, the state supreme court sustained this ordinance. In this country until the last few years wage rates in private employment were seldom considered a subject of possible legal regulation.

The first American state to pass a minimum wage law was Massachusetts. An investigating commission was appointed there in 1911, and its report resulted in legislation in 1912. In 1913, as a result of further investigations, eight states [4] followed the example of Massachusetts, and in 1915 two more were added.[5] Arizona enacted legislation in 1917 and Colorado revised its law, Congress legislated for the District of Columbia in 1918, North Dakota, Texas, and Porto Rico passed laws in 1919, while South Dakota followed in 1923. The Nebraska law, under which no action had ever been taken on the ground that no complaints had been received, was repealed, apparently by accident, in codifying the laws in 1919,

[1] The New York City Board of Estimate showed a broad social point of view in its efforts in 1915 to fix a just wage for street cleaners, who are among the lowest paid and least skilled of city employees. The board proposed fixing their pay in harmony with the results of a thorough investigation of the income necessary for a family of five "living in accordance with American ideals." Such an income was then said to be $70 a month in New York City. Considering the increase of prices, it would have become $118 by the summer of 1919. While the wages of street cleaners were raised, this standard was not reached.

[2] California, Code, 1906, No. 2894, Sec. 1.

[3] Massachusetts, Laws 1914, C. 413.

[4] California, Colorado, Minnesota, Nebraska, Oregon, Utah, Washington, Wisconsin.

[5] Arkansas, Kansas.

and the Texas Act, although declared constitutional by the state supreme court, was repealed in 1921.

Constitutional amendments specifically allowing minimum wage legislation were passed by California in 1914 for women and minors, and, contrary to American precedent, by Ohio in 1912 for all classes of workers, although no legislation has yet been enacted in that state.

These fifteen minimum wage laws resemble much other American labor legislation which also when first passed, in part for constitutional reasons, in part perhaps because of the more evident inability of this class of workers to protect themselves, applied only to women and minors. Then, too, many American representatives of labor oppose minimum wage laws for men, feeling that men workers can obtain better wages by organization without the aid of legislation. In addition, wage investigations in this country have far more often dealt with women than with men, so that at present in America there exists a much greater body of evidence to show inadequate wages among women than among men workers.

Despite the mass of evidence on the evil effects of low wages for women and children, the United States Supreme Court in 1923 held unconstitutional the minimum wage law of the District of Columbia,[1] thereby reversing its previous favorable action in the Oregon case as well as seven favorable decisions in state supreme courts. The District of Columbia decision, however, applied only to women and left intact the laws as affecting children. Most state minimum wage commissions are, however, with the cooperation of employers, continuing to enforce standards already set up for both women and children, but few new rates for adults have been put into force since the decision except in Massachusetts, where the law is not compulsory.

3. Standards

The purpose of minimum wage legislation is the raising of excessively low wages. The question of the standards of wage awards is therefore an important one. How adequate

[1] Adkins *v.* Children's Hospital, 261 U. S. 525, 43 Sup. Ct. 394 (1923).

is the minimum wage? Is it always a "living wage," and, if so, is account taken only of the bare physical necessities of life, or is allowance also made for the requirements of mental and moral welfare? Is provision made for the support of a family or for the needs of the individual worker alone? Is there any consideration of probable periods of unemployment? On what basis do wage boards fix the pay of young, inexperienced, and handicapped workers?

(1) *Australia*

The statutes of the Australasian states except Victoria refer to the minimum wage as a "living wage." Since 1912, Western Australia has required every minimum prescribed to be "sufficient to enable the average worker to whom it applies to live in reasonable comfort, having regard to any domestic obligations to which such average worker would ordinarily be subject."[1] The 1918 amendment to the New South Wales arbitration act establishes a board of trade, one of whose important functions is the collection of facts which will enable the arbitration court to determine annually a general minimum living wage for men and for women.[2] Tasmania and Victoria originally provided that the "wages paid by the reputable employer" should be taken as the basis, but this standard proved difficult to administer, and the clause was dropped. In New Zealand in 1921, an amendment provided for alteration of awards according to fluctuations in the cost of living since September 30, 1920.

The wage determinations of the Australian states have been much influenced by the decisions of the Commonwealth Arbitration Court which settles interstate trade disputes, and which early set as the minimum for unskilled laborers a sum sufficient to cover "the normal needs of the average employee regarded as a human being living in a civilized community." In other words, the minimum is a living wage in the broader sense of the term, not a mere subsistence wage. Above this "basic wage," which the court does not permit to be lowered for such considerations as international competition or the

[1] Western Australia, Industrial Arbitration Act, 1912, No. 57, ¶ 84.
[2] *Commonwealth Arbitration Reports*, Vol. II, p. 3.

lack of profitableness of the enterprise, may be fixed an additional "secondary wage," "the extra payment to be made for trained skill or other exceptional qualities necessary for an employee exercising the functions required."

The question of differing wage standards for men and for women has been clearly worked out in Australia. Since a man must normally maintain a family, a living wage for male workers must cover the cost of such maintenance; a woman ordinarily supports herself alone, so that the minimum for female workers is fixed on that basis. "The minimum cannot be based on exceptional cases."[1] For the same reason, the partial support of some women workers by their families is not considered in fixing their wages. When both men and women are employed in the same occupation, the wage rate is fixed for the sex usually found therein. Allowance is also made in wage fixing for time lost on account of irregular employment, and for any special expenses connected with the occupation, such as traveling expenses or the provision of uniforms.

The increased cost of living created a demand in 1920 for an investigation which resulted in the appointment of the Federal Basic Wage Commission. This body unanimously reported that £5. 16s. per week was a living wage for a family of five; but the prime minister held that this wage, representing an increase of 35 per cent, would cause an economic revolution. A recommendation was made for a basic family wage which would allow £4 for each man, with additional allowances of 12s. weekly for each dependent child. This plan was adopted by the Australian Commonwealth for Public Service employees and illustrates the new tendency in wage regulation.[2]

(2) *Great Britain*

In England, where no standard is set by the law itself, except the elimination of "sweating," the general practice is "to level the wage for the whole trade in each district up to the standard

[1] *Commonwealth Arbitration Reports,* Vol. VI, p. 71.

[2] For an analysis of recent developments, see Dorothy Sells, "Development of State Wage Regulation in Australia and New Zealand," *International Labour Review,* November, 1924.

of the best employer in that district." [1] In the badly sweated trades this means a considerable increase for most of the workers, but not necessarily a living wage. More recently arrangements have been completed for an automatic adjustment of minimum wage rates in accordance with variations in the cost of living in certain trades.[2]

(3) *The United States*

a. Definition of the Living Wage. Nearly all the American laws define in general terms the principle to be followed in fixing wages, which is usually that of a living wage. In a majority of the laws, phrases such as "the necessary cost of proper living" and "to maintain the health and welfare" are used.[3] In working out wage standards on this basis, the English practice of leveling up wages to those paid by the best employer in the trade in a given district is obviously not a sufficient guide. Then, too, since the laws apply only to women and minors, relative standards for the two sexes need not be considered, as in Australia. One finds, however, America on the whole using the Australian standard for women workers—namely, the cost of living of the entirely self-supporting woman. American employers have sometimes asked that the help received by many women workers from their families be taken into account in fixing the standard, but this request has been denied.

Earlier orders were in the neighborhood of $8 and $9 a week. Following the war-time price increases, the state of Washington was the first to break away from the traditionally low levels by establishing, in September, 1918, a flat rate of $13.20 for all experienced adult women for the period of the war, in practically all industries. Oregon followed in 1919 with the same wage, and both rates were still in effect at the beginning of 1926. In the same year, Wisconsin established her minimum hour rates of 22 to 25 cents for practically all industries. The District of Columbia Commission, making provision for the

[1] John A. Hobson, "The State and the Minimum Wage in England." *The Survey,* February 6, 1915, p. 503.
[2] Great Britain, Ministry of Labor, *Labour Gazette,* July, 1925, p. 229.
[3] California, Laws 1913, C. 324.

high cost of living in the city of Washington, fixed minima of $15.50 in the printing and engraving industry and $16.50 —the highest award in the country at the time—in mercantile establishments. Massachusetts followed in 1920, with an order for a rate of $15.25 weekly in the women's clothing industry, and $15.50 in paper-box-making. But these awards, made when the cost of living was at its highest, were reduced in 1922 to $14 and $13.50 per week, respectively. California in 1923 set a weekly minimum of $16 for most of the important industries. In the Middle West, rates run slightly lower except in North Dakota where the minimum runs from $14 to $15 per week. In Minnesota, the minimum is $12 for adults in the larger towns, for 36 to 48 hours per week, and overtime payment is required as in several other states.

Even under the highest wage awards, strict construction has been placed by most wage boards upon the term "necessary cost of living." As a matter of fact, the budget, like the wage rate which it determines, is a compromise. The representatives of the employees present their budget and their proposal for a rate based on it; the representatives of the employers do likewise, and the two forces contend until they come to some agreement. The budgets provided for under recent orders, even the most liberal, do little more than secure "not a wage so . . . women can live well, not enough to make life a rich and welcome experience, but just enough to secure existence amid drudgery in gray boarding houses and cheap restaurants."[1] That this is so is shown by an examination of two Massachusetts budgets, the earlier drawn up by the wage board in the brush industry in 1914, and the latter estimated in 1920 for the women's clothing worker.[2]

b. Wage Losses from Unemployment. In fixing standards for minimum wages, the question of regularity of employment is of great importance. Whether or not a worker can secure steady employment in a given industry is the factor which determines whether the "living wage" prescribed in an award provides a "living income" throughout the year. Many low-

[1] Walter Lippmann, "The Campaign against Sweating," *New Republic*, March 27, 1915, Supp., p. 8.

[2] See table on page 212.

Minimum weekly budget for a self-supporting woman in Boston, 1914.

Board and lodging	$5.50
Clothing	1.35
Laundry	.20
Doctor and dentist	.....
Church	.10
Vacation	.19
Recreation	.09
Newspapers and magazines	.08
Education	.....
Savings	.....
Carfare	.60
Incidentals	.17
Total	$8.28

Weekly budget allowed Massachusetts women's clothing workers in May, 1920.

Board and lodging	$9.50
Clothing	3.25
Laundry	.45
Doctor and dentist	.40
Church	.10
Vacation	.40
Recreation	.37
Newspapers and magazines	.....
Education	.18
Savings	.30
Carfare	.20
Incidentals	.10
Total	$15.25

paid industries whose wage rates are affected by minimum wage awards are notably irregular, as for example candy-making and paper-box-making.[1] A few states have attempted to meet the problem of irregular employment by requiring a higher rate per hour when full-time work is not provided.

c. Profits of the Business. An important question likely to arise when wage standards are fixed is whether or not the financial condition of the industry should be taken into account. Most often the problem comes up in connection with the struggling business which claims it cannot survive if its workers are paid a living wage. The issue here is the lowering of the standard of wages in order to secure the continued existence of such an industry. Such a concession enables an industry to flourish without paying the whole cost of maintenance of those whose time and services it uses. Its workers must be partly supported by the earnings of others, who are thus practically subsidizing the underpaying industry. Such a trade has well been called "parasitic," since its existence depends on the bounty of others. It may be that other members of the woman's family (and the better-paying occupations in which they are employed) make up the deficit in her income; it may be that society as a whole pays the bill for the physical and moral deterioration of the workers by its expenditures for hospitals, charities, and reformatories. Most American statutes stipulate

[1] See Irene Osgood Andrews, "The Relation of Irregular Employment to the Living Wage for Women," in *Fourth Report of the New York Factory Investigating Commission*, pp. 497-635; also in *American Labor Legislation Review*, June, 1915, pp. 287-418.

that the minimum wage shall cover the cost of living. In Colorado and Massachusetts, however, "the financial condition of the business" is to be considered side by side with the cost of living.

d. Substandard Workers. Nearly all minimum wage laws permit the fixing of "suitable" wages for young workers and apprentices and for inexperienced workers. The usual practice is to name the rate for young workers and apprentices in the award with the regular minimum rate. In some cases where lower rates were set for minors and learners, especially in trades requiring little skill, there were attempts to substitute young girls and inexperienced workers for adults. To overcome this difficulty it was found necessary to specify the length of the apprenticeship and sometimes also the proportion of apprentices allowed. Learning periods specified in the orders vary from three weeks in the canning industry in one state to two years in the mercantile industry of another state.

The employment of slow or infirm workers at lower rates is generally permitted only by special license from the commission. For further protection against the abuse of the privilege, certain of the laws specify the proportion of such workers in a single establishment for whom licenses may be issued.

The problem of piecework has caused considerable difficulty. Employers have been inclined to object to the hourly rates on the ground that their employees who are on piecework cannot make the hourly rate. The California commission worked out a method by which employers may test their piece-rates, by providing that if in an individual establishment the piece-rates do not yield to at least 66 2/3 per cent of the female employees engaged on each product the minimum wage, which in this case is 28 cents an hour, the piece-rates must be raised to the point where they will do so.

4. Methods of Operation

There are two types of minimum wage law. One, the "flat-rate" law, prescribing the legal minimum in the statute itself, is very rare, while the other type, under which a board or commission after proper investigation fixes rates for one industry

or group of industries at a time, includes the vast majority of these laws now in existence.

(1) *Flat-rate Laws*

Laws which directly fix the flat minimum rate are found only in certain of the Australian states, and in Arizona, Arkansas, South Dakota and Utah. In Australia, in addition to the system of wage boards, laws sometimes establish very low flat-rate minima, frequently of not more than 48 or 72 cents a week, intended principally to protect children, learners, and apprentices from being put to work without wages and dismissed when they ask for pay. In America, only the Arizona law, with a $16 weekly minimum, and the Utah statute, which requires a daily wage of 75 cents for females under eighteen, 90 cents for inexperienced women, and $1.25 for experienced women over that age, fix universal flat rates, while South Dakota fixes a minimum of $12 per week for women and girls in a number of industries.[1] In Arkansas a flat rate of $1.25 a day for experienced workers and $1 a day for females having less than six months' experience is fixed by the law, but the commission may, after investigation and public hearing, either raise or lower these rates.[2] This it has done in a limited number of instances. This method of fixing uniform flat rates prevents the more careful adjustment for various industries and localities which is elsewhere undertaken by wage boards, it fails to secure the active interest of the employers and employees concerned, and it makes revisions difficult during a period of rapidly changing prices such as occurred between 1916 and 1919. For women laundry workers in Little Rock, Ark., the National War Labor Board made an increase of $3.50 a week above the legal minimum, saying that "This law was passed a number of years ago under other conditions and cannot therefore be taken as a fair standard under the war conditions now existing." The flat-rate method is held by most students of the problem to be disadvantageous.

[1] Arizona, Laws 1923, C. 3. The law fails to specify any enforcing authority. Utah, Laws 1913, C. 63. Enforcement is placed with the Commissioner of Labor. South Dakota, Laws 1923, C. 309.

[2] Arkansas, Laws 1915, No. 291.

(2) *Wage-board Laws*

Representative of the second type of minimum wage laws, those which fix rates for various industries through wage boards, are the laws of Great Britain and Canada and of most Australian and American states. In Great Britain, under the amending act of 1918,[1] the minister of labor is authorized to appoint representative "trade boards" to fix minimum rates in any industry "in which, on account of defective organization, wages are unduly low, or there is reason to apprehend an undue fall in wages when the special war conditions have passed."[2] New trades can be brought under the act without parliamentary confirmation, which was formerly necessary, though Parliament still reserves the right to veto such action. The boards may fix minimum time or piece rates which may differ for different classes of workers, for different districts, for different processes, or for any combination of these factors. Rates may be arranged to come into operation successively at the end of specified periods, and variations in rates may be made, to remain in force only during specified periods. In short, under the new act, great flexibility in rate-fixing is secured.

These commissions—called in the United States minimum wage commissions, industrial welfare commissions, or industrial commissions—are usually unsalaried and composed of from three to five persons, one of whom must usually be a woman, appointed by the governor. Their jurisdiction extends over females and usually over male minors up to eighteen or twenty-one, and over all industries, except in certain states where specified lists exist. The commissions are authorized to subpœna witnesses, administer oaths, and examine books and papers, and employers are required to keep records of the names, addresses, and wages of women and minor employees. If the commission learns by investigation—which is sometimes compulsory on petition—that wages are insufficient to maintain the specified standard of living, it must proceed either to determine a minimum rate or to establish a subordinate wage board for the industry.

[1] 8 and 9 George 5, C. 32 (1918).
[2] Great Britain, Ministry of Labor, *Labour Gazette*, August, 1918, p. 308.

The subordinate board, which is provided for in all the laws, must be representative of employers, employees, and the "public." Unlike the foreign acts, which provide for the nomination of representatives by employers and employees, American laws generally leave the method of selection to be determined by the commission. The commission may, of course, ask both parties to elect, and this democratic method is required in the Minnesota law "so far as practicable." While in theory it has been felt desirable that in the interests of democracy employers and employees should elect their representatives to the wage boards, in practice it has proved exceedingly difficult to depend entirely upon election for securing proper representatives for unorganized workers. Their lack of acquaintance and the fear of losing their places on account of their service on the boards make them reluctant to serve, and timid in conference. For the present it has therefore been found more effective to leave the enforcing authority free to select representatives from lists submitted by the employees or from those formerly in the trade as well as through election. Employers, also, have often been unwilling to elect their representatives.[1]

The subordinate wage board may use the investigations of the commission in determining wage rates or may make further investigations of its own. It must make a report of its work with recommendations to the commission, which may accept the recommendations in whole or in part or may refer them back to the board for further consideration or may convene a new board. When the report of the wage board has been accepted by the commission, a public hearing must be held; if after public consideration no change is deemed necessary in the recommendations, they are promulgated as orders which become effective in thirty or sixty days. Nearly all the laws grant rehearings on petition of either side. Copies of orders issued by a commission must in most cases be forwarded to the employer concerned, who is required to post them in a conspicuous place. Minimum wage rates may apply either

[1] In Minnesota the commission was obliged to choose representatives of both employers and employees for the wage boards, and to select several of the latter from outsiders. See John A. Ryan, "The Task of Minimum Wage Boards in Minnesota," *The Survey*, November 14, 1914, p. 171.

to time or to piecework, and in several states orders may be issued for a given locality or area. In Wisconsin the industrial commission has power to classify industries for the purpose of adjusting wage rates.

The interests of employers and employees are usually further safeguarded by provisions for a court appeal from the commissions' rulings, the procedure and the subjects for court review being carefully specified. In most of the states, rulings may be set aside if unreasonable or unlawful; in North Dakota, Oregon, and Washington only questions of law may be reviewed, while in Massachusetts an employer may have an award set aside in his particular case by filing a declaration under oath that it would prevent a "reasonable profit." In most instances, the findings of fact by the commissions are held *prima facie* reasonable, and any new evidence must be referred back to them for consideration.

The commissions, except in Arkansas, are authorized to enforce their own rulings. Most of the states provide fines of $10 to $100 for employers who fail to pay the minimum wage or who violate any sections of the act or any commission ruling. It has also been found necessary to penalize by a fine of $25 to $1,000 employers who discriminate against employees because they have testified in wage investigations or served on wage boards. In Massachusetts, however, employers cannot be compelled to pay the minimum, and the only punishment for those paying less than indicated as a minimum is the possibility of the publication of their names in a given number of newspapers throughout the state. But in 1924, the Supreme Judicial Court, while sustaining the law as a whole, held [1] that newspapers could not be compelled to publish lists of those not complying with the minimum wage decrees. In most states, employees who have not been paid the legal minimum rate may recover the unpaid balance through a civil suit, which has proved an effective weapon in securing observance of the awards.

In America, then, under the most favorable conditions the establishment of minimum wage rates has been a long and fairly complicated process. First there is the investigation

[1] Commonwealth *v.* Boston Transcript Company, 249 Mass. 477, 144 N. E. 400 (1924).

by the commission, then generally further investigations and deliberation by a representative wage board, next public hearings, and finally a possible court review before the minimum rate goes into effect.

5. Results

It is still alleged in some quarters that wages are fixed by economic laws, any legislative interference with which can result only in disaster. At present all that can be said is that experience covering twenty years in Victoria and shorter periods elsewhere has failed to confirm these dire predictions. One of the strongest testimonials on the value of minimum wage legislation is found in the extension of the British act to prevent dislocation of wages after the war, following investigations of its operation by a subcommittee of the reconstruction committee. It was officially stated that, "The eight years' experience of the satisfactory results achieved by the trade boards, whose activities have proved of benefit not merely to the workers, but to all sections of the trades which worked under them, pointed to an extension of the Trade Board Act, 1909, as the best means of meeting the situation." [1]

(1) *Changes in Wage Rates*

Perhaps the first question to be considered is whether the laws have succeeded in raising wage rates. Nearly all the evidence so far collected goes to show that they have. Some instances of failure are known. In Victoria, for instance, it has proved difficult to maintain the legal rate in the furniture trade among the Chinese, where neither employees nor employers welcomed the establishment of the wage board,[2] and in England the custom of distributing work through middlemen, and the depression of the industry, led to evasions in the lace-finishing trade.[3] Similar evasions have been sus-

[1] Great Britain, Ministry of Labor, *Labour Gazette*, August, 1918, p. 308.

[2] M. B. Hammond, "Where Life Is More Than Meat," *The Survey*, February 6, 1915, p. 498.

[3] *Sixth Annual Report of the Anti-sweating League*, p. 6.

pected with regard to homeworkers in the British tailoring industry.[1] But on the whole, in the different countries and in the various industries, the awards of the wage boards have been found to be effective. In Victoria, official reports show, average wage rates increased 7.6 per cent in thirteen board trades in a period of about five years before awards were made, but 16.5 per cent in these and in six additional board trades during a similar period after awards were made. In six trades a period of decline in wage rates became a period of advance after the making of awards. During the whole time wage-rate advances in twelve non-board trades amounted to 11.6 per cent.[2] In the branches of the English tailoring trade covered by the trade board, it is estimated that about one-third of the women and between one-fourth and one-fifth of the men received increases in their earnings.[3] In Washington the industrial welfare commission states that in twenty-four stores, before the minimum wage award, 1,758 women received less than $10 weekly, while after the award only 561 women received less than $10 weekly, the number of workers remaining approximately the same.[4] A report of the United States Bureau of Labor Statistics on the effect of minimum wage determinations in Oregon retail stores indicated that average weekly earnings of women were 8.6 per cent higher in the face of a business depression which caused an 8 per cent decrease in the sales of these stores.[5] A year after its decree in the brush industry, the Massachusetts Minimum Wage Commission found that only five, or 1 per cent, of the employees whose wage records it took were receiving less than the legal minimum.[6]

[1] See R. H. Tawney, *Minimum Rates in the Tailoring Industry*, 1915, pp. 202-210.

[2] Ernest Aves, *Report to the Secretary of State for the Home Department on the Wages Boards and Industrial Conciliation and Arbitration Acts of Australia and New Zealand*, 1908, p. 30.

[3] R. H. Tawney, *Minimum Rates in the Tailoring Industry*, p. 95.

[4] *First Biennial Report of the Industrial Welfare Commission, State of Washington*, 1915, pp. 13, 79.

[5] United States Bureau of Labor Statistics, *Bulletin No. 176*, July, 1915, p. 33.

[6] Massachusetts Minimum Wage Commission, *The Effect of the Minimum Wage Decree in the Brush Industry in Massachusetts*, 1915, p. 5.

(2) *Changes in Wages above the Minimum*

It is frequently declared that legal minimum wage rates tend to become maximum wage rates, thus injuring those whom they are expressly designed to benefit. This does not, however, appear to be generally the case. Both the chief factory inspector at Melbourne, Victoria, and the secretary of the British Board of Trade declare that as far as their experience goes current wages are not held down to the minimum set by law.[1] The former official even declares that "the average wage in a trade is invariably higher than the minimum wage." In one Victorian industry, clothing, after an award had been in force for six years, wages averaged nearly 20 per cent higher than the legal minimum.[2] The establishing of minimum rates in the clothing trades in Great Britain led in several districts to trade union action which fixed standard rates considerably above the legal minimum.[3] In Portland, Ore., also, the United States Bureau of Labor Statistics found that the proportion of women getting more than the legal minimum increased after the law went into effect.[4] In Wisconsin, an official investigation in 1923 showed that 31.2 per cent of the women were receiving between 25 cents, the legal minimum, and 30 cents per hour; 57.9 per cent were earning 30 cents and over.[5]

(3) *Effect on Unemployment*

It is further argued against minimum wage laws that they force workers out of industry, either because the workers are considered by the employer unprofitable at the legal rate, or because they can be replaced by apprentices or by specially licensed workers at a lower rate, or perhaps because they have been active on the wage boards. While all three abuses have probably taken place at various times, they are not universal and are not inherent in the laws. On the first point, the testimony of the chief factory inspector at Melbourne, pre-

[1] Irene Osgood Andrews, *Minimum Wage Legislation*, pp. 62-63, 77-78.
[2] Henry R. Seager, "Theory of the Minimum Wage," *American Labor Legislation Review*, February, 1913, p. 89.
[3] R. H. Tawney, *Minimum Rates in the Tailoring Industry*, p. 96.
[4] United States Bureau of Labor Statistics, *Bulletin No. 176*, p. 33.
[5] Wisconsin Labor Statistics, May and June, 1923.

viously quoted, is that "this dislocation [of the less speedy workers] is not serious, and that as a rule things regulate themselves fairly satisfactorily."[1] The Oregon investigation made by the United States Bureau of Labor Statistics showed that experienced women workers were neither thrown out of employment by the operation of the law nor supplanted by men.[2] In sixteen brush factories in Massachusetts the total number of women increased from 332 to 334 between 1913, when the first wage investigation was made, and 1915, the year following the minimum wage decree, the number of men decreased from 472 to 417.[3] The system of issuing special permits for less efficient workers to be employed at lower rates, which is provided for by most of the statutes, is undoubtedly helpful in making the adjustment. On the other hand, the displacement of adult skilled workers by apprentices or by defective workers at a lower rate can be checked by limiting the percentage of employees in any establishment who may work at such lower rates, as is already done in Minnesota with regard to defectives. The matter of discrimination against workers who serve on wage boards is more difficult to handle, although most American laws establish penalties for it. This discrimination is a severe handicap to securing a proper representation of the employees on wage boards. This is no serious argument against minimum wage legislation, however, as the same sort of discrimination often takes place against the leaders of the workers in any concerted movement for higher wages.

(4) *Effect on Industry*

From the side of employers it is frequently declared that minimum wage laws will put them under such a handicap that they will be forced to move to freer territory or be driven out of industry altogether. Neither seems to have taken place to any appreciable extent. The officials of the Victorian Chamber of Manufacturers and of the Victorian Employers' As-

[1] Quoted by Irene Osgood Andrews, *Minimum Wage Legislation*, p. 63.
[2] United States Bureau of Labor Statistics, *Bulletin No. 176*, pp. 8, 9.
[3] Massachusetts Minimum Wage Commission, *Bulletin No. 7*, 1915, p. 11.

sociation, the two bodies which originally led the opposition to the wage-board system, now declare that they have no wish to see the system abandoned.[1] In 1903 and 1904, eleven of the thirty-eight special boards then in operation in that country were established upon the application of employers.[2] Only a single instance is recorded of a plant leaving the state because of the minimum wage law.[3] In Great Britain, also, in the industries having wage boards, the "employers have not been ruined or even injured in their profits,"[4] and the Board of Trade reports that it is "not aware of any tendency of manufacturers to transfer their business to foreign countries, or, in cases where lower wage rates have been fixed for Ireland than for Great Britain, to transfer their business from Great Britain to Ireland."[5] The actual cost of the necessary changes is, after all, not burdensome. In Oregon retail stores the increased labor cost was found to be only three mills on each dollar of sales.[6] In the Massachusetts brush industry, both the amount of capital invested and the value of the product increased in the year following the decree.[7]

(5) *Effect on Trade-unionism*

Certain trade-union officials, especially in the United States, have feared that minimum wage legislation would hinder the trade-union movement by enabling the workers to secure wage gains without the aid of organization. Their fears have not proved true. Instead, the formation of wage boards has often acted as a stimulus to the organization of unions, through

[1] M. B. Hammond, *American Labor Legislation Review,* February, 1913, p. 113.

[2] Victor S. Clark, *The Labor Movement in Australasia,* 1907, p. 147.

[3] "A brush manufacturer from England, who had recently come to Victoria to establish his business, was so enraged at the idea that the wages he was to pay were to be regulated by law that he moved across Bass Strait to Tasmania. What has happened to him since Tasmania has adopted the same system of wage regulation, I do not know."—M. B. Hammond, "The Minimum Wage in Great Britain and Australia," *Annals of the American Academy of Political and Social Science,* July, 1913, p. 32.

[4] John A. Hobson, "The State and the Minimum Wage in England," *The Survey,* February 6, 1915, p. 503.

[5] Quoted by Irene Osgood Andrews, *Minimum Wage Legislation,* p. 78.

[6] United States Bureau of Labor Statistics, *Bulletin No. 176,* p. 10.

[7] Massachusetts Minimum Wage Commission, *Bulletin No. 7,* p. 14.

which the workers have in some cases been enabled to make further gains above the legal minimum rate. This is the testimony of Australian observers and of the British Board of Trade, and it has been stated that in the experience of Massachusetts "the conspicuous feature is the impetus given to workers in the candy and brush trades to form organizations where none had been before." [1]

(6) *Effect on Efficiency*

A final point to consider is whether guaranteeing to every worker a legal minimum wage reduces incentive and output. The preponderance of evidence is that it does not, but that it even has the opposite effect, due in part to the employer's insistence on greater returns for increased wages, and in part to the workers' spontaneous response to the improved rate of remuneration.[2] Some employers in Australia feel that output has been reduced in recent years, but they ascribe the decline to trade-union policy rather than to wage awards, while the employees deny the charge altogether.[3] In England and in the United States it is believed that efficiency has gone up rather than down. Thus the British Board of Trade declares that "there are indications that in many cases the efficiency of the workers has been increased," [4] and the Industrial Welfare Commission of Washington concludes that "the whole standard of efficiency and discipline has been raised." [5] In fact, it may be said that the beneficial results of minimum wage legislation have been largely due to the transfer of em-

[1] Florence Kelley, "Status of [Minimum Wage] Legislation in the United States," *The Survey,* February 6, 1915, p. 489.

[2] "'Output per head has increased,' said another [firm]; 'as a general rule the girls work better if they are paid more.' Indeed, the psychological effect of relatively high and low rates on the workers would appear to be exactly the reverse of that often ascribed to them. So far from low rates 'making them work,' they often produce listlessness and despair. So far from high rates 'encouraging slackness,' they stimulate the workers to earn as much as possible while at work upon them." (R. H. Tawney, *Minimum Rates in the Tailoring Industry,* p. 133.)

[3] M. B. Hammond, "Where Life Is More Than Meat," *The Survey,* February 6, 1915, p. 502.

[4] Quoted by Irene Osgood Andrews, *Minimum Wage Legislation,* p. 78.

[5] *First Biennial Report of the Industrial Welfare Commission,* State of Washington, p. 13.

phasis from competition for low wages to efficiency on the part of both employer and employee.

Among the better-established results of minimum wage legislation, therefore, may be mentioned (1) that it has raised wages; (2) that minimum wage rates do not in general tend to become maximum rates; (3) that it does not necessarily force workers out of industry; (4) that it does not unduly handicap employers; (5) that it does not undermine trade-union organization; and (6) that it does not decrease efficiency.

6. Constitutionality

The constitutionality of minimum wage legislation involves a new application of the principle of the police power of the state. While it is an accepted constitutional principle that the employee's right freely to contract for the disposition of his own labor cannot be limited except by "due process of law," yet the police power of the state can restrict the freedom of contract for the protection or betterment of the public health, morals, peace, and welfare. Enactments of the legislature which reasonably tend to that end have been commonly sustained by the courts. Are minimum wage laws a legitimate extension of this power?

The courts have already sanctioned under the police power principle state interference with the wage bargain by limiting working hours for all classes of employees, and by regulating certain conditions of the wage payment, such as the frequency of payment, store orders, or payment in cash.[1] Justification for state interference to fix minimum wage rates has been sought on the same grounds on which other protective legislation has been upheld.

[1] As early as 1859, in a wage exemption case, the court said: "The idea underlying the ultimately developed sentiment of the people upon that subject . . . is that the citizen is an essential elementary constituent of the state; that to preserve the state the citizen must be protected; that to live he must have the means of living; to act and to be a citizen he must be free to act and to have somewhat wherewith to act, and thus to be competent to the performance of his high functions as such. Hence it would seem, as no doubt it was, a matter of the gravest state policy to invest the citizen with, and to secure to him, those essential perquisites, without which the state could not demand of him at all times his instant service and devoted allegiance." Maxwell *v.* Reed, 7 Wis. 582 (1859).

In public employment, indeed, it has been frequently decided that the legislature may rightfully regulate wage rates as well as other conditions of labor both on direct work and on work done by contractors. On work done by contract the wage regulation has commonly taken the form of stipulating that the current rate of wages shall be paid, and the constitutionality of this form of regulation seemed to be well established.[1] In 1914, moreover, the Washington State Supreme Court sustained a more drastic wage regulation for public works. Spokane had fixed by ordinance a minimum wage rate of $2.75 a day for common labor on all public improvements. Though this rate was higher than the current rate for similar work, the court upheld the ordinance, even when applied to work done by contractors, as neither unreasonable nor in violation of the public policy of the state.[2] In January, 1926, the United States Supreme Court in an Oklahoma case held the phrase "current rate of per diem wages in the locality" invalid as so vague and indefinite that "the constitutional guaranty of due process cannot be allowed to rest upon a support so equivocal."[3]

These cases, however, were based on the proprietary power of government, and not on the police power. The legality of state regulation of wage rates in private employments was less certain. It was not until the Supreme Court of the United States, by an even division, left in force a previous decision of the Oregon Supreme Court in favor of the state's minimum wage law that the question seemed settled.[4] One justice did not vote because h had taken part in the preparation of the brief[5] in favor of the act. The Oregon court took judicial notice of the "common belief" that many women are employed at excessively low wages and that health, morals, and the public welfare are injured thereby. Accordingly, the law

[1] See Atkin *v.* Kansas, 191 U. S. 207, 24 Sup. Ct. 124 (1903).
[2] Malette *v.* City of Spokane, 77, Wash. 205, 137 Pac. 496 (1913).
[3] Connolly, Commissioner of Labor of Oklahoma, *et al.*, *v.* General Construction Co., January 4, 1926.
[4] Stettler *v.* O'Hara, 243 U. S. 629, 37 Sup. Ct. 475 (1917).
[5] The brief is prepared in a similar way to those used in the defense of women's hour laws, and contains a mass of evidence on legislation providing a minimum wage for women, the experience on which such legislation is based, and citations to a large number of legal cases bearing on the subject.

was held constitutional on the same grounds on which laws restricting the hours of labor for women have been sustained. The court held that "Every argument put forward to sustain the maximum hours law or upon which it was established applies equally in favor of the constitutionality of the minimum wage law as also within the police power of the state and as a regulation tending to guard the public morals and the public health." [1]

In answer to the argument that the minimum wage law was beyond the police power of the state, the court said: "Such legislation must be taken as expressing the belief of the legislature and through it of the people. We think we should be bound by the judgment of the legislature, and if there is a necessity for this act, that it is within the police power of the state to provide for the health, morals, and welfare of women and children and that the law should be upheld as constitutional."

In another Oregon case [2] the objection was raised that the act was an infringement of the rights guaranteed by the fourteenth amendment in that it abridged "the privileges or immunities of citizens." To this the court replied that: "The right to labor for such hours and at such wages as would reasonably seem to be detrimental to the health or welfare of the community is not a privilege or immunity of any citizen."

In addition to the two favorable decisions of the Oregon Supreme Court in 1914, and that of the United States Supreme Court in 1917, favorable verdicts were handed down by the supreme courts of Arkansas and Massachusetts and twice by supreme courts in Minnesota and Washington. The Arkansas court, in upholding the state's flat-rate law, pointed out that while the legislature was under obligation not to fix an unreasonable or arbitrary minimum wage, there was no more appropriate standard than the normal needs of the employee, which was the basis upon which the legislature had proceeded [3] In sustaining the Massachusetts law, the court especially noted the fact that it was not compulsory, and reserved opinion as

[1] Stettler *v.* O'Hara, 69 Ore., 519, 139 Pac. 743 (1914).
[2] Simpson *v.* O'Hara, 70 Ore., 261, 141 Pac. 158 (1914).
[3] State *v.* Crowe, 130 Ark. 272, 197 S. W. 4 (1917).

to the legality of a compulsory law.[1] The Minnesota and Washington cases turned on the police power question, as had those in Oregon.[2]

Meanwhile the minimum wage law of the District of Columbia had come into the Court of Appeals of the District and its procedure through this court has been described as follows: "On the first hearing Mr. Justice Robb was unable to sit because of illness. Under statutory authority the other two Justices designated Mr. Justice Stafford of the Supreme Court of the District to sit in his place. The decision, on June 6, 1921, was two to one in favor of the statute. Chief Justice Smyth and Mr. Justice Stafford were in favor; Mr. Justice Van Orsdel was opposed. Motions for a rehearing were denied on June 22, of the same year. Three days later, Mr. Justice Robb, who had now recovered, wrote the Chief Justice that he was considering an application for a rehearing. On July 1, he wrote that he had decided to vote for a rehearing and had so notified counsel and Mr. Justice Van Orsdel. Later Justices Robb and Van Orsdel instructed the clerk to enter an order granting a rehearing. The Chief Justice dissented. The case was reargued on February 14, 1922, and decided on November 6, 1922. The vote was two to one against the statute." [3]

Chief Justice Smyth in dissenting stated: "It would seem from the foregoing that the appellants, finding themselves defeated, sought a justice who had not sat in the case, but who, they believed, would be favorable to them, and induced him, by an appeal directed to him personally, to assume jurisdiction and join with the dissenting justice in an attempt to overrule the decisions of the court. I shall not characterize such practice; let such facts speak for themselves." [4]

The case was then appealed to the United States Supreme Court, which by a five to three decision rendered an adverse opinion written by Mr. Justice Sutherland, on April 9, 1923,

[1] Holcombe *v.* Creamer, 231 Mass. 99, 120 N. E. 354 (1918).
[2] Williams *v.* Evans, 139 Minn. 32, 165 N. W. 495 (1917); Miller Telephone Co. *v.* Minimum Wage Commission, 145 Minn. 262, 177 N. W. 341 (1920); Larsen *v.* Rice, 100 Wash. 642, 171 Pac. 1037 (1918); Spokane Hotel Co. *v.* Younger, 113 Wash. 359, 194 Pac. 595 (1920).
[3] Thomas Reed Powell, *Harvard Law Review*, March, 1924.
[4] Children's Hospital *v.* Adkins, 284 Fed. 613, 1922.

in Adkins v. Children's Hospital.[1] In 1925 the Arizona minimum wage law came to the Supreme Court which merely submitted a memorandum holding that it was bound by its decision in the Adkins case.[2] These decisions applied only to working women, and left the laws intact as affecting minors.

The Constitution of the United States specifically provides that Congress shall legislate for the District of Columbia, and by an unbroken line of decisions from Marshall to this case, an Act of Congress is presumed to be constitutional unless proved to the contrary beyond reasonable doubt. Chief Justice Taft pointed out—"But it is not the function of this court to hold congressional acts invalid simply because they are passed to carry out economic views which the court believes to be unwise or unsound." Mr. Justice Holmes added, "I am of the opinion that the statute is valid."

Mr. Justice Sutherland, however, considered the measure an infringement of freedom of contract and did not think that minimum-wage legislation could be compared with restrictive legislation affecting public utilities, public work, nor methods of wage payments. Neither could it be sustained, he argued, on the same ground as legislation regulating the hours of labor. He also pointed out that the passage of the nineteenth amendment had changed the political status of women and thereby tended to equalize the bargaining power of men and women. But Mr. Chief Justice Taft stated that "The nineteenth amendment did not change the physical strength or limitations of women upon which Muller *v.* Oregon rests," and Mr. Justice Holmes added: "It will need more than the nineteenth amendment to convince me that there are no differences between men and women or that legislation cannot take those differences into account." Probably the main objection of the majority was that this measure fixed wages without regard to the value of the services rendered. They did not indicate which one of the many wage theories they would be willing to accept.[3]

[1] 261 U. S. 525, 43 Sup. Ct. 394 (1923). Mr. Justice Brandeis, although technically eligible, did not vote, because he was of counsel in the Oregon cases.

[2] Sardell *v.* Murphy, 46 Sup. Ct. 22 (1925).

[3] For a compilation of leading legal opinion on this case, see, "The Supreme Court and Minimum Wage Legislation," *New Republic,* Inc., 1925.

After the Adkins case in the District of Columbia, several state supreme and federal district courts were asked for opinions in reference to the status of state minimum wage laws, and in all cases these courts held that they were bound by the United States Supreme Court decision although many of the judges specifically state that they do not agree with the economic philosophy advanced by Mr. Justice Sutherland in the Adkins case. Following these decisions, state minimum wage commissions continued to enforce the acts affecting adult women wherever the employers would voluntarily cooperate. Prosecution for violation, however, was no longer possible, and the making of new regulations practically stopped, except in Massachusetts where the law is not mandatory. As applied to minors, who comprise nearly half of the workers affected, the acts remained in full force.

This situation led Wisconsin in 1925 to adopt a new law which uses the terminology of Mr. Justice Sutherland, and provides that: "No wage paid or agreed to be paid by any employer to any adult female shall be oppressive. Any wage lower than a reasonable and adequate compensation for the services rendered shall be deemed oppressive and is hereby prohibited."

Whatever the future may bring, it seems fairly safe to say that the idea of a living wage for all workers has become a popular one. Our minimum wage laws have at least done this—they have called the attention of employers, employees, and the public to some of the strange and unreasonable inconsistencies and discrepancies which exist in the wage system. They have been one of the most efficacious means of bringing to light facts of industry which are indispensable for the intelligent construction of economic and legislative programs. Whether we get away from chaotic methods of wage payment by means of greater equalization of power through organization of the workers, or by means of public intervention to fix a minimum wage, or by means of combinations of both methods, we can feel fairly well assured that the tendency is toward a guarantee of standards of living below which no worker should be allowed to fall.

CHAPTER V

HOURS OF LABOR

Of the many lessons which the World War taught industry, none is more clear-cut than that long hours do not pay. The experiences of the war strengthened the scientific basis for restriction of hours and gave an impetus to legislation. Yet in spite of a general tendency in the United States toward a shorter workday—a tendency which made especially rapid progress from 1915 through 1918—the old ideal of "eight hours for work, eight hours for rest, eight hours for what you will" has not yet been realized by the majority of American wage-earners.

Beginning in the spring of 1915, an active movement for the eight-hour workday swept the country, which, according to figures compiled by the United States Bureau of Labor Statistics, reduced to eight the working hours of 3,462,000 persons between January 1, 1915, and June 30, 1919. The movement began in Bridgeport, Conn., in 1915, when a series of "eight-hour" strikes swept through that hive of war industries, not ceasing until the factories of the city were practically on an eight-hour basis. It spread mainly among machinists in 1915 and 1916, though anthracite coal workers had obtained a straight, and railroad employees a basic, eight-hour day before the United States entered the war. Eight-hour agitation was strengthened during the war by the government's attitude and by the requirement of eight hours' work on government contracts, even though the latter was regularly waived and overtime at higher rates permitted. "The eight-hour day is an established policy of the country," said the President's personal mediation commission, and the government's chief wartime arbitration agency, the National War Labor Board, was favorable to the principle. Important industries going on an eight-hour basis during the war included the garment trades, the lumber industry in the Northwest, newsprint paper, ship-

yards, and slaughtering and meat-packing. Following strikes or threats of strikes, the eight-hour day was adopted in many textile mills in the early months of 1919. A large portion of the glass workers and the confectionery and ice-cream workers also gained a week of forty-eight hours or less, and further reductions between 1919 and 1923. At the later date, less than 2,000 in each industry, as compared with 15,000 in 1914, were reported as working in establishments where prevailing weekly hours were sixty or over. This general reduction in hours reached its height in 1920.

The shorter hours which labor gained during the war did not result in decreased production. On the contrary, the labor shortage and unprecedented demand for goods stimulated employers to introduce more machinery, better equipment and management, which, together with the heightened efficiency of the workers, led to a tremendous increase in production.[1] This increase continued to gain momentum after the close of the war. Lack of market for goods and readjustment to post-war conditions brought the depression of 1921-1922. The Federal Reserve Board in analyzing the course of business for the year 1923 stated:

"The fact that the year, taken as a whole, has been one of unparalleled industrial and trade activity has been somewhat obscured by the recession from the unusually high levels reached during the first quarter. The growth during the early months was a continuation of the expansion which had been under way for a year and a half, and carried the volume of production to a record level. . . . Manufacturers began to feel some uncertainty about the possibility of marketing at profitable prices the large current output." [2]

The same authority in its analysis of the business of 1925 stated: "Manufacturing production in 1925 was nearly 30 per

[1] The same tendency in European countries following the adoption of the eight-hour day in 1919 is discussed in a report of the International Labor Office, which is summarized in the *International Labour Review* of December, 1925; "Results of the Adoption of the Eight-hour Day: I. The Eight-hour Day and Technical Progress," by Edgar Milhaud. Mr. Milhaud states: "The view is gaining ground that the value of this reform from the point of view of output consists in the fact that it stimulates energy on the part of the workers and initiative on that of the employers."

[2] *Federal Reserve Bulletin,* January, 1924, p. 6.

cent greater than in 1919 and about 5 per cent greater than in 1923, while the number employed in factories in 1925 was smaller than in both 1919 and 1923, and their earnings were less than in 1923 and only 7 per cent greater than in 1919. These figures indicate an increasing rate of production per employee." [1]

Production also increased in mining. The average amount of bituminous coal mined daily per employee in 1924 was 4.6 tons as compared with 3.7 tons in 1914 and an average of 4 tons for the decade ending with 1923. In the meantime, excepting during the war years, the annual production was restricted by an increasing number of days of enforced idleness for the miners. The average number of days bituminous mines were operated in 1923 was 179, and in 1924, 171, as compared with 195 in 1914.

The following table compiled from data in the United States Census of Manufactures shows the course of change in hours of labor in manufacturing industries from 1909 to 1923. "Prevailing hours" are the average usual working hours in the establishments, and take no account of varying hours for individuals nor overtime operation which occurs at times in nearly

TABLE SHOWING COURSE OF CHANGE IN HOURS OF LABOR IN MANUFACTURING INDUSTRIES IN THE UNITED STATES FROM 1909 TO 1923

Percentage Distribution of Wage-earners in Manufacturing According to Prevailing Hours of Labor					*Total Number of Wage-earners and Millions of Horse Power (Machinery)*	
	Prevailing Hours per Week					
Year	*48 and under*	*Between 48 and 54*	*54 to 60*	*Over 60*	*Total Number Wage-earners*	*Primary Horse Power used for Machinery (Millions)*
1909	7.9	7.3	76.1	8.7	6,615,046	18.8
1914	11.9	13.4	68.8	5.8	6,896,190 *	22.3
1919	48.6	16.4	31.9	3.0	9,000,056 *	29.3
1921	51.5	18.2	27.8	2.5	6,946,570	Not collected
1923	46.1	21.9	30.1	1.9	8,778,156	33.1

* Excludes establishments engaged in automobile repairing which were not listed in 1921 and 1923.

[1] *Federal Reserve Bulletin*, January, 1926, p. 34.

all industries and is provided for in most agreements between organized labor and employers. The table also shows the total number of wage-earners engaged in manufacturing and the amount of machinery as measured by millions of horse power used.

In 1909, of the 6,615,046 wage-earners enumerated by the Census of Manufactures, only 7.9 per cent were employed in establishments where the eight-hour day prevailed. "Prevailing hours" for three-quarters of them were fifty-four to sixty weekly. No fewer than 344,011, or 5.2 per cent of the whole number worked where prevailing hours were between sixty and seventy-two weekly; 116,083 worked where the prevailing hours were seventy-two per week; and 114,118 where the prevailing hours were more than seventy-two.

By 1921, over 50 per cent of the wage-earners, more than 3,500,000 as compared with less than 1,000,000 in 1914, were working in establishments where the prevailing hours were forty-eight or less per week. The proportion of those working fifty-four hours or more had fallen to less than one-third, and of those working over sixty hours to 2.5. The depression of 1921-22 brought in general somewhat longer hours, in unorganized industries. With the return of business prosperity, 1923-1926, the tendency was again to shorten hours, but by March, 1926, they still averaged longer than in 1921.

Under modern industrial conditions, excessive hours of work break down health. Even with short hours the strain of modern industry, with its speed, its piecework, its division of labor, involving the monotonous repetition of the same process, sometimes even of the same movement, is a heavy tax on the worker. With the ten- or twelve-hour day or the seven-day week, a man must go back to his job before he has had sufficient rest to recover from the excessive fatigue of the long work period, and a progressive decline in health results. "In my judgment," said a former official of a large steel company, in 1914, "a large proportion of the steel workers, who from early manhood work twelve hours a day, are old men at forty." [1]

Though it is the health dangers of long hours which are

[1] William B. Dickson, former vice-president, United States Steel Corporation, *The Survey*, January 3, 1914, p. 376.

most often emphasized, the lack of leisure for family life, for recreation, for all requirements of citizenship, is no less an evil. It should not be forgotten that the time spent in going to and coming from work and the dinner hour often add two hours to the length of the workday proper, so that an eleven-hour day is likely to mean thirteen hours away from home. Said a Pittsburgh steel worker of the results of such a workday, "Home is where I eat and sleep." [1] The beneficial effects on workers of the adoption of the eight-hour day in European countries are repeatedly emphasized in a report of the International Labor Office.[2] The good results included increased activity in education, decrease in alcoholism to which exhausted workers resorted for stimulation, and general improvement in health, morals, and devotion to family life.

For women workers, aside from their weaker physique, the "long day" is especially onerous because of the double burden of domestic duties and wage work which many of them carry. Ordinary men rest when their day's toil is over, but there are few working girls who do not have at least mending and laundering to do in the evenings, and many married women must take the entire care of their homes and children before and after work.

Long hours, moreover, do not make for the greatest efficiency of the worker in production. It is sometimes argued that if hours are reduced output will decline in proportion. This might be true if human beings were mere machines and not human beings who grow tired. As a matter of fact, as has been demonstrated by numerous investigations, the law of diminishing returns operates nowhere more strikingly than in regard to hours of labor. In Great Britain, in an effort to increase the supply of munitions early in the war the legal restrictions on the hours of women and children were relaxed, and night and Sunday work and days of twelve to fourteen hours became common for all classes of workers. Yet the supply of war materials failed to meet demands, and claims that the employees were "slacking" were met by counter charges

[1] Quoted by John A. Fitch, "The Steel Industry and the Labor Problem," *The Survey*, March 6, 1909, p. 1091.

[2] This report is summarized in the *International Labour Review* of February, 1926, p. 175; "Results of the Eight-hour Day: II. The Eight-hour Day and the Human Factor in Production," by Edgar Milhaud.

that the workers were being driven beyond human endurance. To advise on the situation, the Health of Munition Workers Committee was formed, and as a result of its recommendations, as a means of improving output, Sunday work was practically abolished, hours were greatly reduced, and almost all the former peace-time restrictions on the hours of women and children were reintroduced. The whole history of this Committee has been of great educational value to officials, employers, and the public, in driving home the fact that excessive hours do not pay.[1]

The data supplied by these and many other studies have been collected and analyzed by P. Sargent Florence in making a scientific estimate of business losses due to fatigue and unrest of workers. Concerning hours of work he concludes: "A reduction of hours increases hourly output and decreases absence and accidents per hour. Reduction to eight hours per day also increases daily output in occupations where speed depends mainly on the human factor, but may fail to do so where the machine sets the pace or the completion of the operation depends on chemical process."[2] An authoritative report by a committee of the Federated American Engineering Societies on its investigation of continuous-process industries after the close of the war states that, in the overwhelming majority of plants that have changed from the twelve- to the eight-hour shift, no technical difficulties have been encountered; that, where good planning and care in execution have been used, the effect upon quality and quantity of production has been satisfactory, resulting in some plants in practically every major continuous-process industry an increase in production of 25 per cent per man, and occasionally more, and that in practically every case the change has reduced absenteeism and labor turnover in a marked degree.

Despite all this evidence of economic and social gain resulting from shortening of work periods, long hours still prevail in many American industries. Establishments which operate continuously often combine the twelve-hour shift with

[1] A study undertaken by the Federal Public Health Service in America during the war also showed the eight-hour day to be more efficient than the ten-hour day.

[2] P. Sargent Florence, *Economics of Fatigue and Unrest*, 1924, p. 348.

the seven-day week, or require their employees to alternate weekly or fortnightly between day and night shifts, working twenty-four hours without rest when the change is made. The engineers' committee referred to above reported in 1922 that there were in the United States forty continuous-process industries in which 300,000 wage-earners were working the twelve-hour shift. Approximately half of these were engaged in the manufacture of iron and steel. Among the principal industries in which the other half were distributed were manufacture of paper, ice, sugar, cottonseed and other vegetable oils, flour, salt, cement, lime, brick, pottery, rubber, and chemicals, and the metals industries, petroleum well drilling and operation, and mining.

Since the publication of the engineers' report, a notable reduction in the twelve-hour shift but an increase in the seven-day week has taken place in the iron and steel industry. Before the war, the major branches of the industry were almost without exception operated on a two-shift basis. During the war, there was some tendency toward the three-shift system, but following the armistice, many of the plants which had adopted the eight-hour shift for emergency reasons returned to the old system. The great steel strike, which was to a large extent a protest against the excessive hours, was crushed in January, 1920. The report of an investigation by a committee of the Interchurch World Movement published in 1920, emphasized the long hours to which the workers were subjected.[1] In 1922 President Harding invited the principal steel manufacturers to meet in Washington to devise some means by which the twelve-hour shift could be abolished, as it had been in European countries at the close of the war. The report of the manufacturers' committee, of which Judge Gary of the United States Steel Corporation was chairman, stating that business and labor conditions rendered it inadvisable to reduce hours at that time, caused widespread popular indignation, voiced by the press and many organizations. The manufacturers soon reversed their decision and in the summer of 1923 began a systematic change from the twelve-hour to the

[1] Commission of Inquiry, Interchurch World Movement, *Report on the Steel Strike of 1919*, chap. III.

eight-hour shift. The report of a survey by the United States Department of Labor states that in the blast furnaces the proportion of employees who labored seventy-two or more hours per week was reduced from 69 per cent in 1922 to 9 per cent in 1924, and of those who labored eighty-four hours per week from 17 to 5 per cent. In this and other continuous processes, weekly working hours of the majority were reduced from seventy-two or more to under sixty. Thousands in these processes, however, still worked eighty-four hours per week, and the proportion working seven days per week increased in blast furnaces from 29 to 45 per cent, and in open-hearth furnaces from 27 to 52 per cent. In this and other departments, there was also a large increase in the number working seven days once in two or three weeks. This means that tens of thousands of wage-earners in the steel industry are working regularly seven days each week and almost as many more seven days every two or three weeks.[1]

In the petroleum industry, also, there is much seven-day labor. After a thorough investigation of a large section of the industry in sixteen states, the United States Department of Labor reported that in 1920 three-fourths of all well drillers and operators, one-third of all pipe-line employees and 23 per cent of employees in refineries were working regularly seven days per week. For the whole industry, this would approximate 147,000 seven-day workers, of whom nearly 20,000, chiefly well drillers and operators, were also working the twelve-hour shift.[2] Between 1920 and 1926, the production of oil increased more than 50 per cent which may have necessitated considerable increase in the number of employees. The engineers' committee in 1922 reported the twelve-hour shift continuing in the well-drilling section of the industry substantially as described above. The survey was not concerned with seven-day labor.[3] In the same year, Mr. Rockefeller publicly announced that he believed "that generally speaking the twelve-hour day and seven-day week should no longer be tolerated in industry,

[1] United States Bureau of Labor Statistics, *Bulletin No. 381*, 1925.
[2] United States Bureau of Labor Statistics, *Bulletin No. 297*, 1922.
[3] Committee on Work Periods in Continuous Industry of the Federated American Engineering Societies, *The Twelve-hour Shift in Industry*, 1922, p. 143.

either from the viewpoint of public policy or of industrial efficiency."[1]

The manufacturing industries in each of which, according to the Census of Manufactures of 1923, more than 5,000 employees were working in establishments where the prevailing weekly hours were sixty or more, are shown in the following table.

Logging and work in sawmills[2] employed in 1923 more wage-earners than any other single manufacturing industry listed. It is scattered through the forests of a score of states, and involves arduous and dangerous labor. The seasons of its greatest activity are winter and spring, and many of its employees are migratory workers who harvest grain in summer and fall. The struggle of these men to organize and obtain decent working conditions has been one of the bitterest in the American labor movement. Thus far, excepting in the Northwest, they are largely unorganized. In 1914, four-fifths of them were working sixty hours or more per week; in 1923 only about one-fourth had gained the forty-eight-hour week, and more than half, 272,368, were still working sixty hours or more.

The cotton goods industry located chiefly in the Northeast and South Atlantic States, employed in 1923 more than 470,000 wage-earners, a large proportion of whom were women and minors, which makes organization difficult. In 1914 nearly half its employees were working sixty hours or more and less than 1 per cent had the forty-eight-hour week. By 1921 nearly 45 per cent had gained the forty-eight-hour or shorter week. During the depression of 1921-1922, they lost ground, and in 1923 only 35 per cent retained the forty-eight-hour week, while the majority were working over nine hours a day. It is noteworthy that only one of the cotton-mill states, Massachusetts, has by law limited the working hours of women to forty-eight per week. Most of the Northern states set the limit at fifty-four, while in the South several set it at sixty, and one state, Alabama, has no hour regulation for women.[3]

[1] *The Survey*, November 1, 1922, p. 147.

[2] Classified in the 1923 Census as "Lumber and Timber Products," not otherwise classified.

[3] For hours of transportation workers and miners see p. 268.

TABLE SHOWING THE MANUFACTURING INDUSTRIES IN THE UNITED STATES IN EACH OF WHICH, IN 1923, MORE THAN 5,000 EMPLOYEES WERE IN ESTABLISHMENTS WHERE THE PREVAILING WEEKLY HOURS WERE SIXTY OR MORE

	Total Number of Employees	*Number of Employees Working*		
		Less Than 60 Hours	*60 Hours*	*Over 60 Hours*
Box, wooden (except cigar)	39,154	33,322	5,727	105
Bread and other bakery products	162,613	149,033	11,320	2,260
Butter, cheese, condensed milk	33,888	15,711	10,520	7,657
Canning, fruit and vegetables	72,534	49,467	19,955	3,112
Car construction and repairing (steam railroads)	488,505	479,721	3,615	5,169
Cement	35,091	12,766	9,405	12,920
Chemicals	74,897	67,311	3,547	4,039
Clay products (brick, tile, etc.)	102,723	81,992	20,436	295
Coke	28,364	22,382	1,303	4,679
Cotton goods	471,503	415,635	55,666	202
Cotton-seed products	12,745	1,097	857	10,791
Fertilizer	18,572	12,936	5,232	404
Flour mills and grain products	35,194	20,263	11,972	2,959
Foundry and machine products	448,777	433,459	14,810	508
Gas	42,282	35,850	504	5,928
Ice	26,852	11,548	2,012	13,292
Ice cream	23,132	13,104	3,486	6,542
Iron and steel:				
Blast furnaces	36,712	12,389	7,144	17,179
Steel works and rolling mills	388,201	328,402	48,063	11,736
Lumber and timber products:				
Logging and sawmills	495,932	223,564	261,968	10,400
Paper and wood pulp	120,677	99,369	3,982	17,326
Planing mills	103,008	94,924	7,621	463
Sugar (cane):				
Manufacture and refining	18,074	8,078	2,274	7,722
Slaughtering and meat packing	132,792	124,543	8,118	131
	3,412,222	2,746,866	519,537	145,819

In many foreign countries, there has been a considerable decrease in working hours since the war. Forty-eight-hour week laws were enacted in New South Wales and Ecuador in 1916, the eight-hour day was established by constitutional provision in Mexico and by decree in Soviet Russia in 1917, and was introduced in most European countries in 1919-1920. The workers held out strongly for its continuance through the long period of business depression and unemployment that followed the war.

In some countries, as in Belgium and Switzerland, the eight-hour day is established for the great majority of workers by statute law; in others, as Great Britain and Germany, less uniformly by trade agreements between employers' and employees' organizations, and by administrative orders; in still others, as in France, by a combination of trade agreements and legislation enunciating the principle and authorizing administrative orders to cover certain industries.

In general, while the eight-hour day is recognized in principle all over Europe, employers have stood out for arrangements providing elasticity in length of hours according to occupation and business conditions. In Germany, particularly, great pressure has been brought to bear upon the workers. The decree of 1923, while still recognizing the principle of the eight-hour day, permits extension of hours by trade agreement. An investigation by the Federation of German Free Trade Unions reported that in May, 1924, 55 per cent of the industrial employees were working more than forty-eight hours per week, and 13 per cent over fifty-four hours. In November of the same year, however, the percentages had fallen to forty-five and eleven, respectively. A decree issued January, 1925, again prohibiting overtime in blast furnaces and coke ovens, was hailed as the first step in return to the eight-hour day in heavy industry.[1] In Great Britain in 1924, according to official report, the basic eight-hour day prevailed in most industries which were regulated by trade agreements or by trade board orders, but in most of them overtime was permitted at time-and-one-quarter to time-and-one-half rates. Official report for 1925 showed a slight decrease in hours. Maximum

[1] United States Bureau of Labor Statistics, *Monthly Labor Review* April, 1925.

hours in coal mines were fixed by law at seven per day,[1] but on July 8, 1926, this was changed by the Parliament to eight hours.

An eight-hour law providing a number of exceptions has been in force in British Columbia since 1924. The official 1925 report on actual working hours in Canada showed great variation, the forty-four-hour week predominating in building, printing, and clothing trades, forty-eight hours in laundries and coal mines, fifty-four in metal mines, fifty to fifty-five in factories, and sixty in lumbering and grain elevators. The tendency is to shorter hours in the Western provinces.

In Australia the forty-four and forty-eight-hour week prevail. Queensland in 1924, and New South Wales in 1925, enacted forty-four-hour laws covering nearly all classes of wage workers.

The eight-hour convention for industrial workers adopted by the official International Labor Conference at Washington, 1919, was, during the next half-dozen years, ratified by only a few of the less important industrial countries.[2] The slowness of its progress was the subject of lengthy discussion at the Annual Conference at Geneva in 1925, when the Belgian delegate declared his government's willingness to ratify the convention at any time that its commercial competitors would do the same, but the English delegate held out no hope of early ratification. In October, 1924, Italy registered ratification of the convention conditioned upon similar action by Germany, Belgium, France, Great Britain, and Switzerland.[3] When a bill providing for ratification was later submitted to the French Parliament, the Rouen Chamber of Commerce adopted resolutions urging that its passage be made conditional on the "unreserved adhesion of the great industrial nations of Europe and the United States of America."[4] Organized employers of Belgium addressed similar demands to their government.

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[1] Great Britain, Ministry of Labor, *Labour Gazette*, April, 1925, and January, 1926.

[2] International Labor Office, *Official Bulletin*, Vol. I, p. 409. This convention by January, 1926, was ratified by Bulgaria, Chili, Czecho-Slovakia, Greece, India, and Roumania.

[3] International Labor Office, *Official Bulletin*, February 20, 1925, p. 11.

[4] International Labor Office, *Industrial and Labour Information*, November 30, 1925, p. 22.

By March, 1926, bills authorizing ratification had been passed by the lower houses of both France and Belgium, that of France conditioned upon ratification by Germany, and that of Belgium unconditionally.[1] By invitation of the British Government the ministers of labor of France, Belgium, Germany, Italy, and Great Britain, and the Director of the International Labor Office, met in conference in London in March, 1926, and there drew up and signed an agreement accepting certain interpretations as to application of the convention and procedure in case of its ratification.[2]

Changing economic conditions, introduction of machinery, other modern equipment, and efficient management have made long hours unnecessary and experience has proved them detrimental to industry and society. In the United States, where machine production is most highly developed, the movement for shorter hours is in some respects less advanced than in other industrial countries. Many wage-earners—prominent among whom are clothing workers, printers, stonecutters, shipbuilders, and construction workers—have gained the forty-eight-hour or forty-four-hour week by organization, but, after a century of effort, probably more than four-fifths of American wage-earners remain unorganized. For the weaker groups—children, women, and men who, owing to disadvantageous social conditions, personal handicaps, or the peculiar character of their work, have been unable to secure reasonable hours—there has been a growing demand for protection through legislation.

1. Maximum Hours

(1) *Children*

The first legislative regulation of the hours of labor in this country applied to children. In 1842 a petition was presented to the Massachusetts legislature by certain citizens of Fall River, who pointed out that the existing hours of labor must be permanently injurious to the health of children and detrimental to their education, and prayed that prohibitory legis-

[1] *Ibid.*, February 8, 1926, p. 164.
[2] *Ibid.*, March 29, 1926, p. 411.

lation be enacted. The agitation resulted in the passage during the same year of a ten-hour law for children under twelve years of age in manufacturing establishments.[1] In the same year, also, Connecticut enacted a ten-hour law for children under fourteen in cotton and woolen mills.[2]

By the beginning of the Civil War, laws limiting the hours of children in manufacturing establishments to ten a day had been enacted in the five additional states of New Hampshire,[3] Maine,[4] Pennsylvania,[5] New Jersey,[6] and Ohio.[7] The Connecticut statute of 1842 was, however, superseded thirteen years after passage by a new law which set back the limit to eleven hours,[8] followed within a year by an amendment which still further lowered the standard to twelve hours a day.[9] Like the first Connecticut law, the early Pennsylvania laws applied only to textile mills, but in the other states the acts covered manufacturing in general. The ages of the children affected varied from twelve in Massachusetts to twenty-one in New Jersey and Pennsylvania. In addition to the states already mentioned, Rhode Island enacted in 1853 an eleven-hour law for children from twelve to fifteen.[10]

These early laws were, however, to a great extent unenforced and even unenforceable. The still frequent provision, for example, that only violations committed "knowingly" are punishable, which, to quote a government report, has "put a premium on ignorance and . . . served to balk the intent of so much labor legislation,"[11] originated in the Massachusetts law of 1842 and was copied in New Jersey and Rhode Island. In New Hampshire, children under fifteen could work longer

[1] Massachusetts, Laws 1842, C. 60.
[2] Connecticut, Laws 1842, C. 28.
[3] New Hampshire, Laws 1846, C. 318.
[4] Maine, Laws 1848, C. 83.
[5] Pennsylvania, Laws 1848, No. 227; Laws 1849, No. 415; Laws 1855, No. 501.
[6] New Jersey, Laws 1851, p. 321.
[7] Ohio, Laws 1852, p. 187.
[8] Connecticut, Laws 1855, C. 45.
[9] Connecticut, Laws 1856, C. 39.
[10] Rhode Island, Laws 1853, p. 245.
[11] *Report on the Condition of Woman and Child Wage-earners in the United States,* Senate Document No. 645, Sixty-first Congress, Second Session, 1910, Vol. VI, "The Beginnings of Child Labor Legislation in Certain States," Elizabeth Lewis Otey, p. 78.

than the statutory ten hours if provided with the "written consent of the parent or guardian."[1] In New Jersey, and in Pennsylvania under the earliest laws, a child could not be "holden or required" to work more than ten hours a day, but if the child worked longer the employer, in order to escape all responsibility, needed only to declare that the extra labor was not required, but voluntary. Ohio even went so far as to legitimatize this subtle distinction by declaring that minors under eighteen might not be "compelled," but that minors under fourteen might not be "permitted," to work more than ten hours. Only in two states were any provisions made for enforcement: in Connecticut constables and grand jurors were to inquire after violations, and in Pennsylvania constables could take action—but only after complaint.

It is interesting to note that the early hour legislation for children resulted almost altogether from interest in education and from the efforts of adult male workers to secure such regulations as a first step toward obtaining similar laws for themselves. Sometimes, also, the men workers undoubtedly believed that restrictions on the hours of women and children would result in decreased employment of these classes of wage-earners, with consequent advantages to themselves. It was not until later that the main emphasis came to be put on the necessity of shortening children's hours to protect the health of the children.

The greatest progress in legislation regarding the hours of labor for children has been made in the last fifteen years. Beginning with Illinois, in 1903, the eight-hour standard for children under sixteen has been established in about three-fourths of the states.[2] The majority of these states have also

[1] Of this law Horace Greeley said: "Why should 'the consent of *the* (?) parent or guardian of such minor' 'be allowed to overrule the demands of Justice, Humanity, and the Public weal'? . . . We believe nothing less than a peremptory prohibition of the employment of Minors for more than 10 hours per day, without regard to the consent of parents or guardians, will effect much, if anything. Still, we are willing to see a trial made even of this milk and water enactment." (New York *Tribune*, August 11, 1847.)

[2] States in which the eight-hour standard for children under sixteen in factories has not been established are: Florida, Georgia, Idaho, Louisiana, Michigan, Montana, where employment of children in factories is forbidden: New Hampshire, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Texas, where the age limit is fifteen.

a forty-eight hour or six-day weekly limit. Three—Mississippi, New York, and Virginia—have a forty-four-hour limit. In a score of states the eight-hour standard applies to all occupations without exemption. All regulate hours in factories, though the laws of Georgia and South Carolina apply to cotton and woolen mills only. Fruit and vegetable canneries are exempted in half a dozen states. The law of North Carolina still permits an eleven-hour day, while several other states, North and South, allow ten hours, and because of lack of law enforcement in some of these states the hours are reported to be still longer.

Legislation for shorter hours for children has sometimes been combined with that for women, but at present, except in states where there is an eight-hour law for females, the workday is nearly always shorter for children than for adult women. The child labor laws, however, not infrequently give more protection to young girls working under the ages of sixteen or even eighteen or twenty-one, than to boys of the same ages. Hour limitations usually apply to all occupations except domestic service, agriculture, and frequently fruit and vegetable canneries. Occasionally the law covers factories, but not stores. The hours during which children may be employed are further regulated by the very common prohibition of night work.[1]

Opposition from employers against limitation of hours has been even stronger than against any other restriction on child employment, the common argument being that manufacturers will not be able to hold their own against competitors in neighboring states where longer hours are permitted. With regard to the eight-hour day, especially, an additional argument frequently advanced is that it would not be practicable to employ children for so short a period in a plant where adults work a longer day. After eight-hour legislation has been passed, however, it has usually been found that the industries soon adjusted themselves thereto.[2] Two laws, in 1916 and 1920, were passed

For specific regulations, which vary from state to state, see latest report on State Child Labor Standards, Children's Bureau, United States Department of Labor.

[1] See "Night Work," pp. 288-294, for a fuller discussion of these prohibitions.

[2] In order to ascertain the grounds for the objection that children could not be worked shorter hours than adults in the same factory, a special investigation was made by an agent of the National Child Labor

by Congress for regulation of hours and other standards of child labor, but both were declared unconstitutional by the United States Supreme Court.[1] In 1924 an amendment to the federal Constitution authorizing Congress to legislate regarding child labor was passed by Congress and submitted to the states for ratification. By March, 1926, it had been approved by four states—Arkansas, Arizona, California, and Wisconsin.

Since all minors are for certain purposes wards of the state, which is empowered to act for their protection when necessary, the constitutionality of state laws limiting their working hours is not questioned. As a minor is legally incapable of entering into a free contract, such laws cannot be said to abridge without "due process of law" his freedom to dispose of his labor. The broad power possessed by the state to regulate the working conditions of minors was thus summed up by the judge in the case of People *v.* Ewer: "So far as such regulations control and limit the powers of minors to contract for labor, there never has been and never can be any question as to their constitutionality." [2]

(*2*) *Women*

In this country agitation for the limitation of women's hours followed close on the heels of the movement to regulate the hours of children. As early as the 'thirties, the labor press had protested against the long hours of work, and strikes for reduction of hours had been called.[3] Naturally enough, the

Committee in three states—Ohio, Illinois, and New York—where an eight-hour law for children had been in operation for several years. The report of the committee reads as follows: "Information was sought in factories representing the industries in which the largest numbers of children were employed. It was found that children were employed eight hours at the same kinds of work at which they had been employed before the law went into effect, while the adults continued to work for longer hours. With practical unanimity, employers reported that they had found no difficulty in readjusting schedules to obey the law, and the eight-hour day for children had not been a handicap upon business, and no cases of failure or removal from the state had resulted. On the contrary, the industries involved have steadily grown." (*Bulletin National Child Labor Committee,* Vol. II, No. 4, February, 1914, p. 44.)

[1] See p. 370.

[2] People *v.* Ewer, 141 N. Y. 129, 36 N. E. 4 (1894).

[3] *Report on Condition of Woman and Child Wage-earners in the United States,* Vol. IX, "History of Women in Industry," Helen L. Sumner, p. 67.

agitation centered around the textile mills, as they were the earliest large factories and their working hours were twelve or more daily. In 1834 a delegate discussing the condition of women in factories before the Trades' Union National Convention in Boston, said of the mill-owners: "They must be forced to shut their mills at a regular hour; there must be a certain time over which they shall not work, that all the inmates may have an opportunity to rest their weary limbs and to enjoy free and wholesome air." [1]

By the 'forties, when many humanitarian movements were rife, the ten-hour cause had made progress, and legislative action was asked for. For example, in 1842, 1843, and 1844 petitions asking for a ten-hour law were presented to the Massachusetts legislature.[2] This early movement came almost entirely from the ranks of the workers themselves, who sought legislation limiting hours for both men and women. Organized working-women played a prominent part in the campaign. The New England Workingmen's Association, an organization of wage-earners, encouraged by a few public-spirited citizens, which soon became the New England Labor Reform League, was active in the agitation. Closely connected with it was the New England Female Labor Reform Association, formed in January, 1854, almost all of whose members were women workers in the textile mills and whose activities centered at Lowell. They organized meetings, wrote for the labor press, and petitioned the legislature for the ten-hour day. The association cooperated with other women workers and started branches in Fall River, Mass., Dover and Manchester, N. H., and perhaps other places. In 1845 the women textile workers of Pittsburgh were unsuccessful in a strike for a ten-hour day, but were told by their employers it would be given them when other localities also reduced their hours. Accordingly, the women wrote to New England for help. The girls of Lowell and Manchester responded and all resolved to work only ten hours after July 4, 1846. But

[1] National Trades' Union, September 13, 1834, p. 2. Quoted in *Documentary History of American Industrial Society,* John R. Commons and Helen L. Sumner, ed., Vol. VI, p. 219.

[2] Charles E. Persons, "The Early History of Factory Legislation in Massachusetts," in *Labor Laws and Their Enforcement,* Susan M. Kingsbury, ed., pp. 24-27.

on account of the opposition of the manufacturers their efforts failed, and they once more tried to secure legislation. These organized women workers first succeeded in New Hampshire, where "by vigorous personal efforts they, more than any other group, secured the ten-hour law of 1847, the first of its kind in the country." [1] Similar acts were passed in Maine and in Pennsylvania in 1848, in New Jersey and in Rhode Island in 1851.[2] Massachusetts passed no ten-hour law until over twenty years later, perhaps partly because the leaders there insisted on effective legislation, which these earlier measures did not prove to be.

These first acts were all of a similar type. They set ten hours as the standard, generally for all workers, for "a day's work" in the absence of "an express contract requiring greater time." [3] In New Hampshire, three days before the law went into effect the manufacturers submitted such express contracts to their employees, and though meetings were held and active agitation carried on to prevent the operatives from signing, all who refused were discharged and their places were soon filled by new workers. In Pennsylvania and New Jersey, notably at Allegheny City, Gloucester, and Paterson, the operatives carried on severe and prolonged strikes to secure the enforcement of the laws. They were successful in some, though not in all factories, but where the hours were shortened, they suffered a corresponding reduction in wages. On the whole, these early acts "were practically dead letters, owing to their contracting-out clauses." [4]

From the 'fifties until after the Civil War, social reform was largely forgotten in absorption in the anti-slavery question. After the Civil War, when the movement for protective legislation revived, the laws asked for applied only to women and children, and were of the modern type, forbidding employment in excess of a specified number of hours. The first

[1] *Report on Condition of Woman and Child Wage-earners in the United States,* Vol. X, "History of Women in Trade Unions," John B. Andrews, p. 80.

[2] *Ibid.,* Vol. IX, "History of Women in Industry," Helen L. Sumner, p. 69.

[3] See, for instance, New Hampshire, Laws 1847, C. 488.

[4] *Report on Condition of Woman and Child Wage-earners in the United States,* Vol. IX, p. 73.

of these had been passed in Ohio in 1852[1] and set a ten-hour day for women workers, but was rendered unenforceable by penalizing only when a woman was *compelled* to work in excess of legal requirements. As most employees will voluntarily work for twelve or more hours a day when they cannot find any one to employ them for ten hours, the law became almost entirely inoperative. In Massachusetts, active agitation was recommended by 1864. By that time the women in the mills were largely Irish and French Canadians, who took little or no part in the movement. After strong opposition a bill was passed in 1874[2] limiting the hours of women and minors in factories to ten daily and sixty weekly. Even this law was ineffective because only "wilful" violations were penalized. It was not till 1879,[3] when an amendment removed the "wilful," that an American state had an enforceable law limiting the hours of women's employment. By that time also, state bureaus of labor and factory inspection were being created in the principal industrial states and were aiding in the enforcement of labor laws.

Since that time, fairly enforceable hour limitation laws for women have been secured in one state after another. In 1908, when the Oregon ten-hour law for women was upheld by the United States Supreme Court, this legislation was placed upon a secure footing, and since that date the movement has gone steadily forward. By 1926 only five states, in most of which comparatively few women were industrially employed, had placed no restrictions on women's hours of work,[4] many had limited hours to eight or nine a day and about three-fourths had a weekly limit of less than sixty hours.

Present-day hour legislation for women runs in general along similar lines in the different states. Most statutes fix the same daily and weekly maximum hours for all occupations covered and generally include the principal industrial occupations for women. Thus in Pennsylvania, hours in "any establishment" are limited to ten daily and fifty-four weekly, and "any establishment" is defined as "any place within this com-

[1] Ohio, Laws 1852, p. 187.
[2] Massachusetts, Laws 1874, C. 221.
[3] Massachusetts, Laws 1879, C. 207.
[4] These states were Alabama, Florida, Indiana, Iowa, and West Virginia.

monwealth where work is done for compensation of any sort, to whomsoever payable" [1] except homes and farms. In only a few cases, however, do the laws define the time during which the work period must fall, either by naming the spread of hours allowed, by fixing opening and closing hours, or by forbidding night work.

American laws, therefore, seem extremely simple when compared with the mass of detail found in European legislation on this subject. General laws exist in most European countries, but either by special statutes or by administrative orders work periods longer or shorter than those of the general law are fixed for many industries and occupations, and frequently even for special processes. This principle is often so far extended as to prohibit entirely the employment of women in kinds of work especially dangerous to their health or safety. For example, the English Factory Act of 1901 gives the home secretary power to make any limitation of hours whatever or to forbid the employment of any class of workers in dangerous trades.[2] On the other hand, in certain cases, as where perishable materials must be handled at once to prevent spoiling, special orders lengthening the permitted period of employment may be issued.[3] In addition, night work is, in general, forbidden, and opening and closing hours, not necessarily the same for every trade, are almost always fixed.

The number of employments covered by hour legislation in America appears to depend largely on what occupations public opinion considers dangerous to the health of women. Thus the exclusion of farm work and domestic service from regulation is at least in part due to the belief that they in no way endanger health. The earlier laws, both those passed before the Civil War to fix a standard of hours and the first acts of the modern type, applied mainly to manufacturing establishments. Such a limitation in the scope of the early laws was natural enough. At that time women were employed in large numbers outside the home only in textile factories. The Census of 1870 shows that but 1 per cent of all the women "gainfully employed" were found in "trade and transporta-

[1] Pennsylvania, Laws 1913, No. 466, Secs. 1 and 3.
[2] 1 Edw. 7, C. 22, Secs. 79-83.
[3] *Ibid.*, Secs. 49-52.

tion." It was in the factories that complaint was made of the overlong hours of work, and it was the factory operatives who carried on the bulk of the early agitation for legislation. Thus in New Hampshire the first hour-limitation law passed in 1847, applied only to manufacturing establishments,[1] and the Pennsylvania law of 1848 affected only "cotton, woolen, silks, paper, bagging, and flax factories."[2] Likewise the Massachusetts ten-hour law of 1874 covered only "manufacturing establishments."[3] It was not until the end of the 'seventies, when the number of saleswomen had largely increased, that the dangers of constant standing and long hours were noticed and agitation was begun for legislation covering this occupation.[4] In 1883 the Massachusetts law was amended to include "mechanical and mercantile establishments."[5] In the same way, as the field of women's employment broadened, the dangers of excessive hours and injury to health were discovered in one occupation after another, and the need for extending protective legislation became correspondingly apparent, until, in the laws passed in the last few years, practically every form of industrial employment has been covered.

The Illinois ten-hour law of 1909 was one of the first to do this. It includes not only factories, mechanical and mercantile establishments, but also any "laundry, or hotel, or restaurant, or telegraph or telephone establishment or office thereof, or any place of amusement, or by any person, firm, or corporation engaged in any express or transportation or public utility business, or by any common carrier, or any public institution, incorporated or unincorporated."[6] Similarly inclusive acts are found in half a dozen other states, and almost every act now covers at least "manufacturing, mechanical, and mercantile establishments." When women entered such new occupations as street-car and elevator operation during the war, however, even the more inclusive of those acts which

[1] New Hampshire, Laws 1847, C. 488.
[2] Pennsylvania, Laws 1848, No. 227.
[3] Massachusetts, Laws 1874, C. 221.
[4] *Report on the Condition of Woman and Child Wage-earners in the United States*, Vol. IX, p. 238.
[5] Massachusetts, Laws 1883, C. 157.
[6] Illinois, Laws 1909, p. 212.

enumerated any list of specified occupations left the women without protection in their novel field of work. Laws such as that of Pennsylvania, which covers "any place . . . where work is done for compensation of any sort," except "private home and farming," and that of Wisconsin, which gives the administrative authorities power to modify the hour laws, are better suited to meet changing industrial conditions.

There are also occasional instances of classification by cities, exempting the smaller places from the operation of the law. The Missouri law of 1909[1] and the Texas law of 1913[2] both applied only to cities of more than 5,000 population. Establishments of various sorts employing fewer than three or five persons have also sometimes been excepted. Until 1914 the Louisiana law applied only to establishments employing more than five persons.[3]

Such exemptions may perhaps also be explained on health grounds. It might be expected that the need for legislation in smaller places would be lessened by a supposed easier pace of work and the greater personal contact between employer and employee. Investigation shows, however, that excessive hours are often worked in small establishments and out-of-the-way places where public opinion is not active, and such exceptions are becoming fewer.[4]

Certain exemptions have also been made because of special industrial requirements, the most important of which have to do with work in canneries. On account of the perishable nature of the materials, operators of canneries have vigorously opposed any legislation which would limit hours of work during the summer months, and because of this opposition a number of states, including most of those in which the industry is important, have allowed women and children to work unlimited hours in this industry.

In the degree of restriction placed upon hours of women's daytime labor, many American states have gone further than

[1] Missouri, Laws 1909, p. 616.
[2] Texas, General Laws 1913, C. 175.
[3] Louisiana, Laws 1908, No. 301, Sec. 1.
[4] For instances of bad conditions in the smaller establishments see reports of the New York State Factory Investigation Commission, the Senate Wage Commission for Women and Children in the State of Missouri, the Oregon Social Survey, and similar investigations.

European countries. Many important industrial states still follow early English and American precedent and fix a daily limit of ten hours, though three-fourths have reduced the working week to less than sixty hours. In recent years, however, as the eight-hour day movement has spread and standards for protective legislation have risen, several progressive states have limited the workday to nine and even to eight hours. New York is the most important industrial state having the nine-hour day and the fifty-four-hour week, while Ohio adds to the nine-hour day a fifty-hour weekly limit, and Massachusetts a forty-eight. The eight-hour limits are found in several Western states and in the District of Columbia, but only California, Porto Rico, Utah, the District of Columbia, and Kansas and New Mexico in certain industries, have the forty-eight-hour week as well as the eight-hour day.

Most American laws omit one great aid to enforcement in failing to set a legal closing hour.[1] A few states fix the incidence of the working day indirectly through the prohibition of night work.[2] In Arizona and Utah the permitted hours must fall within a twelve-hour period, but as a general rule regulations of the sort are not found in America.

In a majority of the states regulations contain some provision for overtime work. In most cases this is to meet pressure of special conditions as Saturdays or the week before Christmas in retail stores, emergencies, sometimes defined as flood, fire, storm or sickness, in telephone exchanges and making up time due to stoppage of machinery in factories or seasonal rushes, particularly in fruit and vegetable canneries. A number of laws allow overtime on one or more days to be deducted from the sixth day, providing the Saturday half-holiday. In most cases the amount of overtime is specifically limited, but

[1] In a few states the danger that a woman may be employed by two or more establishments a total length of time in excess of the legal maximum is recognized. In Massachusetts, for instance, until recent years, it was not uncommon in the textile mills for a woman to work ten hours during the day in one mill, and then for several hours in the evening in another. The practice was called "swamping." The Delaware statute (Laws 1913, C. 175, Sec. 2) contains a prohibitive provision in effective form, applying to all classes of work and placing the responsibility for discovering any previous employment in the same day entirely on the employer.

[2] See "Night Work," pp. 288-294.

in a few states no limit is set except by the stipulation of pay at extra rates. Extra wage rates are required in most cases, sometimes increasing, as in California, with the length of time worked. In general the tendency seems to be to make overtime regulations more specific. This is particularly true of states which control hours by administrative orders.

As previously stated, American statutes usually set the same daily hour limit for a large and varied group of industries. That the requirements and the strain of various occupations may differ widely, and that the same limitation of hours may not equally well meet the needs of the workers in all of them, has been given but little consideration. For example, while it is apparent that in some occupations eight or even ten hours a day may not be physically injurious, in others, such as those involving exposure to poisons, extremes of temperature or humidity, or excessive nervous strain, a much shorter work period may be seriously harmful to health. In certain branches of the telephone service, for example, the nervous strain is particularly severe. An investigation was made in the state of New York of the telephone industry by the Bureau of Women in Industry in 1920. The basic working time was found to be eight hours with one-fourth of the force working overtime to the extent of from three to six hours. A seven-hour shift was recommended with compulsory rest periods at reasonable intervals and the elimination of all overtime work.[1] Yet, with the exception of New Mexico,[2] no American state has, on account of special dangers, placed the statutory restriction for any selected occupation in which women are employed below that stated in the general law.

But recently a few states have adopted a new method of regulating women's hours, together with minimum wages and working conditions. These states lay down in their statutes the

[1] State of New York, Department of Labor, *Bulletin No. 100,* July, 1920.

[2] The statute of New Mexico, enacted in 1923, provides a nine-hour day in mercantile establishments and corporations engaged in transportation, with a fifty-six hour weekly limit in the latter occupation; an eight-hour day in factories, laundries, hotels, etc.; and an eight-hour day shift and ten-hour night shift and a forty-eight-hour weekly limit in certain telephone exchanges.

general principle that a woman is not to be employed for any period of time dangerous to her health, safety, or welfare. A commission is then given the power to determine, after investigation, maximum periods for different industries and even for different localities, if desired. Such a law may become an instrument for the protection of the worker's health much superior to the ordinary flat-rate law. A commission regulating hours, through its powers of investigating and setting standards, can take account of special factors in certain lines of work which might cause serious injury to the workers in the usual work period, and can adjust hours according to the strain of each specific occupation.

While all laws of this type conform to this same general principle, they differ in one important provision. California [1] and Oregon permit their commissions to fix only shorter hours than those established by the general statute. "No such order of said commission shall authorize or permit the employment of any woman for more hours per day or per week than the maximum now fixed by law." [2] In Ohio and Wisconsin the hours fixed may be either more or less than those of the general law. Kansas has no law limiting hours for women except the act empowering the commission to make regulations.

In Kansas, Oregon, Washington, California and Wisconsin, the chief states in which really important action on hours of labor has been taken by these commissions, a considerable amount of flexibility has been secured in the determination of daily hours by commission rulings. In Kansas, for example, regulations vary from an eight-hour day and forty-eight-hour week with provision for overtime in public housekeeping occupations, a basic eight-hour day and six-day week in telephone exchanges, to a nine-hour day and forty-nine-and-a-half-hour week with provision for limited overtime at increased rates in laundries and factories, and a six-day week in the latter, and a nine-hour day and fifty-four-hour, six-day week in mer-

[1] California, Laws 1913, C. 324.

[2] Oregon, Laws 1913, C. 62, Sec. 9. In 1917 this law was amended to except women employed in harvesting, packing, curing, canning, or drying perishable fruit, vegetables, or fish, and the authority of the Industrial Commission to regulate the hours of women so employed was withdrawn. (Laws, 1917, C. 163.)

cantile establishments. There are also varied provisions as to rest periods and time for meals.[1]

The possibilities of still more detailed adjustment to the needs of specific industries are evident, and therefore the method of regulating hours through administrative rulings, provided the precaution is taken of preserving a statutory limit of hours, marks a decided advance toward accomplishing the real purpose of hour limitation, the prevention of fatigue by forbidding excessive hours of work.

The following table shows limitation of women's hours on January 1, 1926. For occupations to which laws apply, exemptions and other details, see the latest bulletin on State Laws Affecting Working-Women, Women's Bureau of the United States Department of Labor.

Most of the special problems in the administration of woman's work laws center about the enforcement of hour legislation. Violations of laws regulating a continuing condition like hours of work are obviously more difficult to detect than violations of safety or sanitary laws which can be discovered by a single inspection. Therefore, various aids to enforcement have long been found necessary. The most common of these is the posting of notices, stating the permitted hours of work, a requirement which the United States Supreme Court sustained as constitutional in 1914.[2] Such a provision had long been in the laws of a number of states. Massachusetts, following English precedent, had found it necessary to require the posting of notices as early as 1880.[3] The law stipulated that printed notices containing the daily hours of work should be posted "in a conspicuous place" in every room where employees coming under the ten-hour law were at work. Immediately an attempt was made to evade the intent of the act. A report of the enforcing authority, the chief of the district police, says that notices were found illegibly written, "on cards four or five inches square, sometimes without a single break between the words, and placed over a doorway or some other inaccessible place."[4] Extra time was also worked on the pretense that it

[1] Industrial Welfare Commission of Kansas, Orders of 1918 and 1922.
[2] Riley *v.* Commonwealth, 232 U. S. 671, 34 Sup. Ct. 469 (1914).
[3] Massachusetts, Laws 1880, C. 194.
[4] *Report of the Chief of the District Police,* 1884, pp. 14-18.

State	Hours a Day	Hours a Week
I. Eight-hour states:		
California	8	48*
District of Columbia	8	48*
Porto Rico	8	48*
Utah	8	48
Kansas	8, 9	48, 49½, 54*
New Mexico	8, 9, 10	48, 56†, 60
Washington	8	56†*
Arizona	8	56
Nevada	8	56
Colorado	8	56†
Montana	8	56†
II. States allowing more than eight but less than ten hours:		
North Dakota	8½, 9	48*, 58
Massachusetts	9	48*
Ohio	9	50*
Wisconsin	9, 10	50, 55*
Minnesota	9½	48, 54
Oregon	9, 10	48, 56*, 70†
Arkansas	9	54*
New York	9	54*
Maine	9	54
Michigan	9	54
Missouri	9	54
Nebraska	9	54
Oklahoma	9	54
Texas	9	54
Wyoming	8½	56
Idaho	9	63†
III. States allowing ten or more hours:		
New Jersey	10	54*
Pennsylvania	10	54*
Rhode Island	10	54
South Dakota	10	54
New Hampshire	10¼	54
Delaware	10	55
Connecticut	10	55, 58
Mississippi	10	55, 60
South Carolina	10, 12	55, 60
Vermont	10½	56
Tennessee	10½	57
Kentucky	10	60
Georgia	10	60
Louisiana	10	60
Maryland	10	60
North Carolina	11	60
Illinois	10	70†
Virginia	10	70†
IV. States placing no limit on hours: Alabama, Florida, Indiana, Iowa, West Virginia		

* Work limited to six days per week.
† No weekly limit set by law. This figure represents daily limit multiplied by seven.

was necessary to stop and start the machinery. Two amendments, in 1886[1] and 1887,[2] were necessary in order to overcome these difficulties. The law then provided that the notices must be put on forms approved by the attorney-general and supplied by the enforcing authority, and must contain the hours of beginning and ending work and of mealtimes, as well as the number of hours worked each day. Similar provisions as to the posting of notices have been found essential in other states.

A more recent device which provides additional help in enforcing the law is that of a record book, open to inspection by the authorities and containing the actual hours worked each day by each female. Few states rely exclusively on this device for help in enforcing the law.[3] Several states, however, require the keeping of record books in addition to posting notices,[4] or as a substitute where daily hours are so irregular that they cannot be determined in advance.[5]

Even the wording of the penalty clause is of importance in relation to the enforccability of the law. Massachusetts's first ten-hour law could not be enforced so long as only "wilful" violations were penalized. Several states still render their laws inoperative by similar clauses. For instance, in South Dakota only the employer who "compels" a woman to work overtime is responsible.[6] Experience shows that it is practically impossible to prove such compulsion and that convictions can be secured only when "permitting" excessive hours is also a violation of the law. The enforceability of the laws in a few Southern states, which penalize only "contracting" to work overtime, also seems doubtful.[7] Even among the enforceable laws there is a difference of effectiveness. It is clearly easier to obtain proof of violation in a state like New Hampshire,[8] where the employment of a woman "outside" the posted hours is a violation of the law, than where the inspector must prove that she worked "longer" than the posted number of hours, as in Ten-

[1] Massachusetts, Laws 1886, C. 90.
[2] *Ibid.*, Laws 1887, C. 280.
[3] One of these is Illinois, Laws 1911, p. 328.
[4] See New York, Laws 1913, C. 200, Sec. 5.
[5] See Kentucky, Laws 1912, C. 77, Sec. 5.
[6] South Dakota, Laws 1913, C. 240, Sec. 1.
[7] See Virginia, Laws 1914, C. 158, Sec. 1.
[8] New Hampshire, Laws 1913, C. 156, Sec. 3.

nessee.[1] It may also be of importance in successful prosecutions to note whether the employer alone, "his agent" or "any person" may be held responsible, and whether only the working of excess hours is penalized or, in addition, a failure to post notices, the making of false statements in notices and time books and the like.

Equitable and necessary as legal limitations on the daily hours of working-women are generally recognized to be, they have frequently been contested as out of harmony with our state and federal constitutions. Clearly, limiting the hours during which a woman may be employed does abridge her freedom to use her capacity for work to its utmost extent. The courts seem to hold in general that such a limitation may be made through the state's exercise of its police power only if excessive hours involve some appreciable danger to the class of workers involved or to the community.

The conflict of judicial decisions on the subject appears to arise from differing opinions as to the existence of such danger. Opinions opposed to legal restriction emphasize the interference with woman's freedom to contract to work each day as long as she pleases, implying that employer and employee stand on an equal footing in determining working conditions, and that an employee works long hours of her own free will. Such a restriction of freedom of contract, they hold, deprives a woman worker without due process of law of the valuable property right of disposing of her own labor as she sees fit, and furthermore is class legislation because it denies her privileges accorded to men workers. The favorable decisions take cognizance of actual industrial conditions and point out that the labor contract is not freely made between equals, but that its terms are settled largely by the employer and that the state may therefore interfere in the interests of the public welfare.

The first important decision on the constitutionality of hour legislation for women was rendered in Massachusetts in 1876, upholding the ten-hour law. In this case, says Professor Ernst Freund,[2] "the court was obviously a good deal puzzled how to deal with the objections raised, disposing of them in a rather

[1] Tennessee, Laws First Extra Session, 1913, C. 121.
[2] Freund, "Constitutional Limitations and Labor Legislation," in *Third Annual Meeting* of the American Association for Labor Legislation, p. 51.

offhand and not altogether satisfactory fashion." In a brief opinion[1] the court pointed out that the legislature had evidently considered factory work "to some extent dangerous to health," and that the statute was therefore a health or police measure. This decision, however, held that the legislation did not prevent women from working as long as they saw fit, but only from working more than ten hours continuously in a factory.

The next important decision on the constitutionality of hour legislation for women was not rendered until 1895, almost twenty years later. During the interval the principle of entire freedom of contract between capital and labor had been developed.[2] This doctrine was reinforced by the idea that the right to dispose of one's labor freely is a property right, not to be abridged—according to the fourteenth amendment to the constitution of the United States—"without due process of law." It was on this ground that in 1895 the Illinois Supreme Court declared invalid an eight-hour law for women in factories.[3] The court could see no "fair, just, and reasonable connection between such limitation and the public health, safety, or welfare proposed to be secured by it."

But three years later, in 1898, the United States Supreme Court showed the fallacy of the doctrine of freedom of contract between employer and employee,[4] and within the next few years in 1900 and 1902, three decisions by state courts [5] brought out in addition reasons why women as a special class of workers particularly need protection. These decisions took into account the fact that women are physically weaker than men and that therefore their health is more likely to suffer from excessive hours of work. Any injury to the health of women workers is of particular social importance, since it is on their health that the vigor of the next generation directly depends.

[1] Commonwealth *v.* Hamilton Mfg. Co., 120 Mass. 383 (1876).

[2] First laid down in 1886 in Godcharles *v.* Wigeman, 113 Pa. St. 431, 6 Atl. 354; Millett *v.* People, 117 Ill. 294, 7 N. E. 631 (1886).

[3] Ritchie *v.* People, 155 Ill. 98, 40 N. E. 454 (1895).

[4] Holden *v.* Hardy, 169 U. S. 366, 18 Sup. Ct. 383 (1898). See "Hours of Labor, Men," p. 282.

[5] Commonwealth *v.* Beatty, 15 Super. Ct. (Pa.) 5 (1900); Wenham *v.* State, 65 Neb. 394, 91 N. W. 421 (1902); State *v.* Buchanan, 29 Wash. 602, 70 Pac. 52 (1902).

The year 1908, however, finally settled the question as far as the restriction of daytime hours to a maximum of ten was concerned. The United States Supreme Court unequivocally upheld the constitutionality of the Oregon ten-hour law as a health measure.[1] "As healthy mothers are essential to vigorous offspring, the physical well-being of women becomes an object of public interest and care in order to preserve the strength and vigor of the race. . . . The limitations which this statute imposes upon her contractual powers, upon her right to agree with her employer as to the time when she shall labor, are not imposed solely for her benefit, but also for the benefit of all." In this case and succeeding ones of a similar nature the influence of the method by which the legislation was defended should not be overlooked. Exhaustive briefs were prepared by Mr. Louis D. Brandeis and Miss Josephine Goldmark, not so much emphasizing the legal aspects of the case as presenting a mass of extracts to show the actual effects of excessive hours of work on the health of women. In 1909, Illinois, whose working-women had been left unprotected from excessive hours since its eight-hour law was overthrown in 1895, passed a ten-hour bill. The constitutionality of the statute was immediately attacked. This time, however, the Illinois Supreme Court did find a clear connection between the measure and the protection of the public health. It recognized not merely a theoretical freedom of contract, but, as well, the facts as to the effects of excessive hours on the health of women. "What we know as men," said the court, "we cannot profess to be ignorant of as judges."[2]

The constitutionality of a ten-hour workday was now established, but the reasonableness of further restriction was still in doubt. In 1915, however, the United States Supreme Court upheld the constitutionality of the California law which fixed an eight-hour day as the maximum for women workers. The court said that the same principles were at stake as in the previous cases, and that while "a limitation of the hours of labor of women might be pushed to a wholly indefensible extreme . . . there is no ground for the conclusion here that

[1] Muller *v.* Oregon, 208 U. S. 412, 28 Sup. Ct. 324 (1908).
[2] Ritchie *v.* Wayman, 244 Ill. 509, 91 N. E. 695 (1910).

the limit of the reasonable exertion of protective authority has been overstepped." [1]

Hour legislation for women has also been attacked on the ground that it is class legislation, discriminating unreasonably between various classes of workers, and denying that "equal protection of the laws" which was promised to all persons by the fourteenth amendment. The statutes have been attacked both because they included certain employments and because they failed to include certain others. The constitutionality of the Illinois law was questioned because it included employees in hotels and in public institutions. One of the chief points raised against the constitutionality of the California law was its inclusion of student nurses. On the other hand, different laws have at various times been called "class legislation" because they included only factories and laundries, and because they excluded mercantile establishments, canneries, stenography, and domestic service. The courts have given but little weight to this type of objection, asserting the freedom of the legislature either to use discretion in enlarging the scope of the laws [2] or to single out those groups of workers most in need of protection.[3]

In an Oregon case the constitutionality of regulation of women's hours by a commission has been attacked on the ground that substituting commission for court authority on questions of fact takes property without "due process of law." The state supreme court sustained the method, holding that it contained the essentials of due process, which it defined as "reasonable notice and a fair opportunity to be heard before some [proper] tribunal." [4] The case was appealed to the United States Supreme Court, where the judgment of the state supreme court was affirmed with costs by an equally divided court in 1917.[5]

Thus the working-woman's theoretical freedom of contract to dispose of her labor under whatever conditions she pleases has been restricted by the state through its police power. Such

[1] Miller *v.* Wilson, 236 U. S. 373, 35 Sup. Ct. 342 (1915).
[2] People *v.* Elerding, 254 Ill. 579, 98 N. E. 982 (1912).
[3] See Withey *v.* Bloem, 163 Mich. 419, 128 N. W. 913 (1910).
[4] Stettler *v.* O'Hara, 69 Ore. 519, 139 Pac. 743 (1914).
[5] *Ibid.*, 243 U. S. 629, 37 Sup. Ct. 475 (1917). See "Minimum Wage," p. 225.

a limitation is rightfully applied to women workers as a class, because as workers they do not stand on equal footing with their employers in bargaining and because as women their health is more quickly injured by excessive hours of work. Furthermore, the community suffers if the health of any large number of women is endangered, for on the health of women depends the vigor of the race. The reasonableness of the range of employments included in the laws has been affirmed, and hours may now be limited to as few as eight in daytime work.

(3) *Men*

In contrast with the considerable development of hour regulations for women and children is the fragmentary condition of American legislation affecting the working hours of adult men. One of the main reasons for the halting growth of this type of law has been the doubtful attitude of the courts. In this matter, however, the courts merely reflect prevailing public opinion, which is as yet hardly awake to the need of restricting men's hours in general employments. Even trade unionists are sometimes opposed to shortening hours for men by the legislative method, through fear that it will weaken union organization.

Most men's hour laws cover employees on public works or in transportation. In the former case the state is merely fixing the working conditions of its own employees; in the latter, the element of public safety is involved. Where public safety is not directly concerned, legislation is common only for the peculiarly hazardous occupation of mining. As with other forms of protective legislation, however, and in view of our increasing knowledge of the dangers of overwork, especially in continuous industries, the principle of hour restriction, first established for women and children, may eventually be extended to cover all wage-earning men. The laws for one day of rest in seven, and the favorable decision of the United States Supreme Court on an Oregon law for ten hours in manufacturing, make it not unlikely that a period of hour regulation for adult male workers has begun.

a. Public Work. The first attempt legally to regulate the working hours of men in the United States was the executive order of President Van Buren in 1840, stipulating a ten-hour

day in government navy yards.[1] Since the early 'thirties, special pressure had been brought to bear upon the federal government to shorten the working day, partly because it was felt that the short workday in public employments would have a strong influence in reducing hours in private industry, and partly because there was little doubt of the government's right to regulate the hours of its own employees. In 1840, therefore, while the eleven- and twelve-hour days were the rule in private industry, Van Buren was induced to issue the order referred to. Although this was done at a time of industrial depression, he requested that no corresponding reduction in wages be made.

It was not, however, until 1868 that Congress took action on the question and provided that "eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the government of the United States."[2] The law did not work as well as its advocates had hoped. Although it applied to contractors and subcontractors, it failed to prohibit agreements for overtime work. Its ineffectiveness in actually reducing the hours of any considerable number of government employees soon became apparent, but it was not until August 1, 1892, that a more effective law covering these classes of employees was passed. This act[3] was mandatory, applied to contractors and subcontractors, and provided a heavy penalty for violations. It did not, however, apply to work done on that very large class of goods or materials purchased by the government, such as army and navy equipment, vessels of war, clothing, boots, shoes and paper. The Attorney-general also ruled that the act did not apply to work done on materials purchased by contractors. Contractors themselves, moreover, were constantly making use of the undefined term "emergency" as an excuse for working employees overtime.[4] Agitation for a more inclusive measure was initiated and continued for twenty years before the law was rewritten. Finally, the Act of June 19, 1912, requiring that an eight-hour

[1] John R. Commons, ed., *Documentary History of American Industrial Society,* Vol. VIII, p. 85.

[2] United States Revised Statutes, 1878, Title 43, Sec. 3738. See United States Commissioner of Labor, *Second Special Report,* 1896.

[3] United States Compiled Statutes, 1901, Sec. 3738.

[4] *Report of Industrial Commission,* 1902, Vol. XIX, p. 792.

provision be inserted in all contracts which may involve the employment of laborers or mechanics when made by, for, or on behalf of the federal government, its territories, or the District of Columbia. Exception was made in the case of contracts for transportation by land or water, for the transmission of intelligence, or for the purchase of supplies which could be bought in the open market, except armor and armor plate.[1] Provision was also made for "emergencies caused by fire, famine, or flood, by danger to life or property," or by any other extraordinary event or condition on account of which the President shall subsequently declare the violation to have been excusable. One year later dredging and rock-excavating in rivers and harbors of the United States, which had been excluded from the eight-hour law of 1892 by a Supreme Court decision,[2] were specifically brought under the operation of the new federal act. But Congress empowered the President during the war to suspend the eight-hour law "in case of national emergency," with pay at the rate of time and a half for all work in excess of eight hours, and this privilege was frequently exercised.[3]

Effective restriction of hours of labor was secured for certain groups of post-office employees before it was for federal laborers and mechanics. As early as 1888 hours of city letter carriers were reduced from ten to eight, with the proviso that pay be not reduced and that extra remuneration at the new rate be given for overtime. In 1912 the eight-hour day was extended to clerks in first- and second-class post offices, work to be performed within ten consecutive hours.

In 1915 legislation to restrict the amount of work which might be exacted of federal employees took a new turn. In addition to the earlier laws limiting the number of hours a day that could be worked, clauses were enacted tending to limit

[1] See opinions of Attorney-general since 1912. One opinion held that under the Appropriation Act of June 6, 1912, where contracts for ammunition are made, the eight-hour provision relates to employees only when they are engaged on that particular government work and that they may work longer hours for their employers (when contractors) on non-government work.

[2] Ellis *v.* United States, 206 U. S. 246, 27 Sup. Ct. 600 (1907).

[3] United States, Laws 1916-1917, C. 180.

the speed and intensity of the labor. In the appropriation bills for both the army and the navy, provisos were inserted that none of the money was to be used to pay any officer "while making or causing to be made, with a stop-watch or other time-measuring device, a time study of any job of any . . . employee . . . or of the movements of any such employee while engaged upon such work." It was also stipulated in both bills that money was not to be used to pay bonuses or cash rewards, except for suggestions resulting in improvements in the service.[1] Similar provisions against the methods of so-called "scientific management" were made annually thereafter.

The movement for a shorter workday on public employments was early taken up by the various states, until by the end of the 'nineties a dozen states and several cities had eight-hour enactments.[2] But the early state laws, like those of the federal government, were often faulty and unenforceable. The turning point was the Kansas law of 1891, which contained practically all of the essentials of an enforceable act. This measure not only fixed hours of labor on direct work for the state, but also extended its provisions to municipal corporations and to contractors for public works, and imposed a penalty for violations by any public official or contractor.

At present over half of the states have eight-hour laws for employees on public works.[3] In practically all cases the laws apply to both direct and contract work, to "the state or any political subdivision thereof," and cover "all manual laborers" or all "laborers, workmen, and mechanics," and occasionally all classes of labor. Frequently certain classes of employees are excepted, as firemen, policemen, and certain classes of workmen in state institutions. Provision is almost always made for overtime in case of "emergencies," frequently defined as "imminent danger to property, life, or limb"; but unless a clear

[1] United States, Laws 1914-1915, C. 83, section on "Increase of the Navy," C. 143, section on "Ordnance Department."

[2] Baltimore (1866) was the first city, and California (1868) perhaps the first state, to adopt this legislation.

[3] When an eight-hour law of this kind went into effect in Ohio on July 1, 1915, during the last few weeks before that date contracts aggregating millions of dollars were let by state and city departments in order to take advantage of the lower cost believed possible under the old ten-hour system.

definition of the term is given, advantage may easily be taken of the exception to permit unnecessary overtime.[1]

Massachusetts adopted a somewhat different principle when the legislature in 1909 fixed a nine-hour day for cities and towns, but gave them the privilege of changing to the eight-hour day by popular vote. Four years later the legislature provided that in any city or town which had not yet accepted the eight-hour day the question must be submitted to referendum at the next municipal election, and if defeated must be resubmitted every two years upon securing a given number of petitioners.[2]

In addition to the state laws regulating hours on public works, a large number of cities have embodied eight-hour provisions in their charters or have enacted eight-hour ordinances to cover municipal work. These measures follow the main lines of the state laws and in addition frequently specify, among other things, the kinds of work which may be done directly by the city and those which must be done by contract, rates of wages, the method of selecting employees, whether by civil service, citizenship, or trade-union membership, and occasionally provide for physical examination of applicants.

The two-platoon or twelve-hour shift system for city firemen has made rapid progress within the last few years, and was said to be in force in some two hundred cities and towns in October, 1919,[3] occasionally as the result of state law, but generally through city ordinance. Agitation for an eight-hour, three-shift system was being carried on by 1919. An ordinance of this nature went into effect in Cleveland, Ohio, April 1, 1919. The various organizations of firemen had been the leaders in carrying on the movement for limiting their hours.

b. Private Employments. In private employments the movement for legislative restrictions upon the length of the working day for men, although associated with the ten-hour campaigns in the interests of both men and women in the reform agitations

[1] Beginning with Wisconsin in 1919, there has been legislation in several states exempting road building in certain cases from the restrictions of the eight-hour day. Wisconsin, Laws 1919, C. 535; Kansas, Laws 1923, C. 157; Massachusetts, Laws 1923, C. 236.

[2] Massachusetts, Laws 1913, C. 822.

[3] New York City, *Municipal Reference Library Notes,* October 1, 1919, p. 37.

of the 'forties, did not attain national importance before the period of the Civil War, when Ira Steward, a Boston machinist, inaugurated a nationwide movement for the universal eight-hour day by day.[1] Scores of eight-hour leagues sprang up, the National Labor Union, the predecessor of the Knights of Labor, indorsed Steward's plan, and during the next few years laws were actually passed by a number of states. First among these was Illinois in 1867. These laws were not enforceable, and the movement died down until it was revived by the growing Knights of Labor, which, however, soon turned the course of action away from the legislative to the trade-union method.

During the past generation, progress has been made mainly through collective bargaining instead of the legal enactment.[2] There have been, however, important exceptions. Over half the states have enacted laws shortening the hours of employees on steam and on electric railways, and more than a dozen states have eight-hour laws for the protection of workers in mines and smelters. Mississippi and Oregon have enacted ten-hour laws and North Carolina an eleven-hour law for workers in manufacturing industries.[3]

(*a*) *Transportation.* The regulation of hours of labor on railroads presents peculiar difficulties. Almost invariably employees in other industries live sufficiently near their work to enable them to return home at night. The engineer or fireman may find himself several hundred miles away from home or even away from food and shelter at the end of a stated number of hours' work. The problem, therefore, is to arrange "runs" so that employees may at the end of their work period find

[1] For a full description of the history and philosophy of this movement see *Documentary History of American Industrial Society,* Vols. IX and X, John R. Commons and John B. Andrews, ed.

[2] At the November elections of 1914 in the Pacific coast states of Washington, Oregon, and California, the Socialists secured a vote on initiated measures for the universal eight-hour day. All of these measures were defeated, largely through the opposition of the farmer vote. Resolutions favoring the legal eight-hour day for men were defeated at both the 1914 and 1915 conventions of the American Federation of Labor, although the vote on the second occasion was closer. This action was taken largely on the alleged ground that if the legislature may fix maximum hours of work it will also fix minimum hours. The real basis of opposition appeared to be the fear that legislative action would weaken the movement for trade organization.

[3] See p. 278.

themselves in habitable quarters. The length of the "run" must, of course, depend somewhat upon the length of the railway division and upon the character of the country through which the road extends.

One of the early court decisions dealing with hours on railroads involved the case of an engineer who, after he had been on duty for nearly seventeen hours, was summoned by the master mechanic of the road to take out another train which it was assumed would require only five or six hours of work. In reality the second run lasted for a much longer time, and on his return after thirty-one hours' service his train collided with another train on the company's road. On the ground of contributory negligence, the court denied the engineer's claim for damages for injuries he sustained.[1] Such situations have not been infrequent and runs of thirty-six, fifty, seventy, and at times even one hundred hours have been recorded.[2] These excessive hours have often resulted in serious accidents and great loss of life, and accordingly the first decade of the twentieth century saw the enactment, under the influence of the powerful railroad brotherhoods of many laws regulating the length of the working day for railroad employees.

Although the legislation is of comparatively recent date, already over half of the states of the Union have placed such acts upon their statute books. This legislation relates usually to two classes of employees, those directly connected with the handling of trains, such as engineers, firemen, conductors, and brakemen, and those connected with directing the movements of trains, such as despatchers, telegraphers, and signal-men.

Considerable uniformity exists in these legal restrictions. For men actually handling the trains, the majority of states make sixteen hours the maximum limit for a day's work, to be followed by eight or ten consecutive hours of rest. Certain classes of employees, such as those on sleeping cars, baggage cars, or wrecking trains, are frequently excluded, while a few roads under a specified length are exempted, as in New York, where the law applies only to lines of thirty or more miles.

[1] Smith *v.* Atchison, Topeka and Santa Fe Railway Co., 39 Tex. Civ. App. 468, 87 S. W. 1052 (1905).

[2] For a vivid discussion of this subject see paper by A. B. Garretson, *American Labor Legislation Review*, Vol. IV, No. 1, pp. 120-128.

Practically all states make exceptions in case of "emergencies," a necessary exemption, but one which, if not defined, can easily be used as an excuse for disregarding all legal limitations.

The second class of railroad employees for whom hour limitations have been established by law are those connected with the movement of trains, such as telegraphers, despatchers, and signal-men. Great irregularity of employment exists among this class of workers, since an operator's work and distribution of time will depend entirely upon the frequency of train service at his particular station. Here, again, legal hours depend upon whether or not employment is continuous. In the case of continuous employment, hours are usually limited to eight a day, and frequently the three-shift system is used, particularly in the larger railroad centers. If employment is not continuous, or if offices are open only in the daytime, hours are usually limited to twelve or thirteen a day, to be followed by a rest period of eight or ten hours, as with trainmen. Most states make a few exceptions or allow overtime for limited periods, while two or three restrict hours only where a certain number of trains, as eight passenger or twenty freight trains, pass daily.

Railroad employees on interstate lines are protected by a federal statute, enacted on March 4, 1907, applying to all "persons actually engaged in or connected with the movement of any train" in the District of Columbia, or in any territory of the United States or on interstate lines.[1] By this act, hours are limited to sixteen a day, with certain provisions for rest periods;[2] but no train despatcher, telegrapher, or any employee who transmits messages or orders by telegraph or telephone "shall be required or permitted to be, or to remain on, duty for a longer period than nine hours" in places continuously operated day and night, nor for more than thirteen hours in places operated only during the daytime. Overtime in cases of emergency, which is carefully defined in the act, may be permitted for four additional hours on not more than three days a week. The Interstate Commerce Commission is charged with the duty of enforcing the act, and it may require reports of violations and of the causes for overtime, and may, after full hearing, extend

[1] United States, Laws 1906-1907, C. 2939.
[2] See "Rest Periods," p. 288.

the period of permitted overtime in special cases. By the operation of the federal act the great majority of railroad employees, even in states without hour limitation laws, are protected, since but few employees are engaged in intrastate train service exclusively.

This law was to some extent superseded by the so-called "Adamson law," providing a basic eight-hour day for railroad trainmen, which was adopted by Congress September 2, 1916.[1] Unusual public interest was attached to the passage of the law, which was rushed through Congress at President Wilson's request in order to avert a nationwide railroad strike which had been called for September 4, the issue being the basic eight-hour day which was demanded by the men and refused by the officials. The law fixed eight hours as the standard for a day's work, and forbade the reduction of wages because of the change until after an investigating commission created by the act had reported. It was immediately claimed by opponents of the law that it was not really a measure for reducing hours, but a subterfuge for increasing wages. The report of the commission created by the act, submitted to the President on December 29, 1917, showed that both wage increases and hour reductions had occurred among the more than 300,000 employees affected by the law.[2] The hour reductions were most frequent among employees working in railroad freight yards. Reports covering 175,744 miles of road showed that 11,390 yard crews had been placed on eight-hour shifts, and only 3,486 crews were still working more than eight hours. Overtime was paid pro rata until 1919 when time-and-one-half rates were introduced. This regulation and the policy of the United States Railroad Administration which managed the railroads during the war, led to much greater uniformity in working hours. The Interstate Commerce Commission reported the total overtime worked by railroad employees in 1923, and it amounted to about one-fourteenth of their straight time. Much of the largest part of this overtime was worked by the train and engine transportation employees, whose overtime totaled about one-seventh of

[1] United States, Laws 1916, C. 436.

[2] United States Commission on Standard Work Day of Railroad Employees, Created by Act of Congress, approved September 3 and 5, 1916, Stat. L., p. 721, Sec. 2. *Report of the Eight-hour Commission,* Washington, 1918, 503 pp.

their straight time, that is, an average of a little more than an hour a day. An investigation by the National Industrial Conference Board [1] shows the freight transportation and yard service employees working much the longest hours, varying from an average of 63.5 hours per week for transportation conductors to fifty hours for yard brakemen in 1923 and from an average of 48.4 to 58.6 hours for the same classes of employees in 1924.

Somewhat akin to the problem of the trainman is that of the motorman and conductor on street railways. Until the early 'eighties, hours for street-car employees were commonly from twelve to fourteen a day, and often ran as high as sixteen to eighteen. In 1864 a coroner's jury in the city of Philadelphia, passing upon a fatal accident, said: "Nor should we expect vigilance and attention from employees worn out by seventeen hours of incessant labor. . . . The constant occurrence of passenger railway accidents demands from this jury an unequivocal condemnation of the companies who compel men to do work to which the bodily and mental frame is not usually equal." [2]

During the 'eighties the states began to enact legislation on the subject, until now about a dozen laws have been passed limiting hours usually to ten or twelve a day. Most of these acts provide for overtime in case of unexpected emergencies, and many require extra compensation for such emergency work, but very few give adequate attention to the equitable distribution of working-time. Although street-car service is one of the most constant forms of employment, the public demands not only regularity, but also additional service at the rush periods of the day, on Sundays and holidays, after the theater, for excursions, public games, or special celebrations, and on many other occasions, most of which do not occur with any degree of regularity. Men must be employed to meet these irregular and often unexpected demands. For this purpose a long waiting-list is usually kept, and men are employed and paid often for only two or three hours at a time. The presence of these extra men acts as a stimulus to the regular men, who,

[1] National Industrial Conference Board, *Wages, Hours, and Employment of Railroad Workers, Research Report*, No. 70, 1924.

[2] United States Bureau of Labor, *Bulletin No. 57*, March, 1905, "Street Railway Employment in the United States," Walter E. Weyl, p. 610.

for fear of losing their jobs, will work for a longer time than the normal period. This situation furnishes an additional reason for the enactment of legislation in several states definitely fixing the maximum number of hours within which the legal day's work must be performed. Rhode Island in 1902 provided that a day's work should not be longer than ten hours, completed within twelve consecutive hours' time.[1] Although this measure specifically permitted contracts for overtime, the supreme court of the state held the ten-hour day binding upon all companies, since the legislature had expressly stated its intention to limit the hours of all employees covered by the act.[2] In 1913 the Massachusetts legislature limited working hours to nine a day and set eleven consecutive hours as the maximum time within which the labor must be performed.[3] This act, moreover, specifically provides that threat of loss of employment or refusal of future work or hindering an employee in securing other work will be considered as "requiring" overtime, which is punishable by a heavy penalty.

Another method of regulating hours of service on street railways is by the insertion of labor clauses in franchises granted to railway companies. This method is much less common in America than in European cities. In Paris, for instance, one of the labor conditions stipulated in the franchise for the subway was that daily hours should not exceed ten. Among the few American cities which have adopted this plan are Dallas, where a twelve-hour day, and Cleveland and Detroit, where a ten-hour day, were secured on local car lines. Hours have been shortened considerably below the legal maximum by trade agreements which, as a rule, set the day's work of motormen and conductors at nine hours, with overtime at time and at half rates.[4]

Regulation of hours in water transportation is found in a federal act of 1913, limiting hours of deck officers to nine out

[1] Rhode Island, Laws 1902, Cs. 1004, 1045.

[2] Opinion to the governor (*In re* Ten-hour Law for Street Ry. Corporations), 24 R. I. 603, 54 Atl. 602 (1902). "The law before us is more clearly within such power, for the triple reason that it deals with public corporations, the use of a public franchise, and a provision for public safety."

[3] Massachusetts, Laws 1912, C. 533, as amended by Laws 1913, C. 833.

[4] International Labor Office, *Studies and Reports*, Series D, No. 14, 1925, p. 46.

of twenty-four while in port, and, except in emergencies, to twelve out of twenty-four while at sea.[1] The federal law of 1915 regulating the working conditions of seamen provides that when a vessel is in a "safe harbor, nine hours, inclusive of the anchor watch, shall constitute a day's work."[2]

(*b*) *Mines and Tunnels.* During the past generation, several states have taken still another step and have enacted legislation regulating the hours of labor for men in private employments where the safety or welfare of the general public is not involved. This class of legislation has been applied particularly to mines, smelters, and related industries.

The mining industries occupy an important position in the industrial life of this country, since they employ about one million workmen, practically all being adult males. Coal mining alone claims over two-thirds the total number. Trade-union organizations in both the coal and the metalliferous branches of this industry have been among the largest and most powerful in America.

The special dangers of mining both from accident and unhealthful conditions have been frequently pointed out, as well as the greater hazard in American than in foreign mines,[3] and by 1926 had become so well-known that over a dozen states had passed eight-hour laws applying to some or all classes of work in mines.[4] These laws vary greatly in scope from that of Pennsylvania, which applies only to hoisting engineers in anthracite mines, to that of Arizona,[5] which covers all classes of workers in underground, open-cut and open-pit mines, cement works, and all employment involved in mining, smelting, or refining ores. Most of the principal coal-mining states have failed to enact effective eight-hour laws.

The eight-hour day was nominally established in the anthracite coal mines in 1916 by agreement between operators and miners, and is usually stipulated in bituminous coal-mine agreements where they exist, but in many bituminous fields the

[1] United States, Laws 1912-1913, C. 118.
[2] *Ibid.*, Laws 1914-1915, C. 153.
[3] See p. 407.
[4] Alaska, Arizona, California, Colorado, Idaho, Kansas, Missouri, Montana, Nevada, North Dakota, Oklahoma, Oregon, Pennsylvania, Utah, Washington, Wyoming.
[5] Arizona, Laws 1912, C. 28.

miners are unorganized and hours are exceedingly irregular.[1] Reports of surveys made by the United States Bureau of Labor Statistics show that time actually spent underground by a considerable proportion of workers in both anthracite and bituminous mines exceeds nine per day.[2] In metalliferous mines also, there is in practice considerable variation in hours. A Department of Labor survey in 1924[3] reported average full-time weekly hours from 48.6 in lead and zinc mines to 53.8 in Western mixed ore and 60 in Alabama iron mines, the total average for all mines surveyed being fifty-three hours.

Hours in coal mines in Great Britain were fixed by law at seven per shift underground and forty-six and a half per week on the surface, but on July 8, 1926, in the midst of a long struggle over disorganized conditions in the coal industry, the Parliament raised the daily maximum to eight hours. In several provinces of Canada and in most European countries legal regulations limit miners' hours to eight per day, the time in Europe generally being reckoned from the moment of leaving the surface to that of return to it. An act passed by Turkey in the latter part of 1925 was commented upon by the International Labor Office as setting a standard for Europe in miners' hours, which this law stipulates are not to exceed six per day including a rest period of one hour and the period of prayer.[4] The labor code of Soviet Russia also limits work underground to six hours.[5]

In legal regulations, surface excavations, and work carried on at less than a specified depth, such as 150 feet in shaft work or 200 feet in tunnel work, are occasionally exempted. Although in some of the deeper mines the heat, moisture and the difficulties of proper ventilation make even eight hours of work a positive menace to health,[6] no mining law in this country has

[1] *Report,* United States Coal Commission, 1923, pp. 31 and 427-429.
[2] United States Bureau of Labor Statistics, *Monthly Labor Review,* July, 1925, pp. 69-70, and February, 1926, pp. 77-78.
[3] United States Bureau of Labor Statistics, *Bulletin No. 394,* 1924.
[4] International Labor Office, *Industrial and Labour Information,* November 23, 1925.
[5] International Labor Office, Legislative Series, 1922, Russia I, p. 14.
[6] In the Comstock silver mines in Nevada, at a depth of 2,000 feet, work has been carried on in short shifts at a temperature of 150° F., the men being freely supplied with ice water. The forty-four-hour law going into effect in New South Wales, January, 1926, limits to six hours per day work underground where temperature is over 81° F., while that

attempted to make any scientific adjustment of hours based on the degrees of danger in different classes of mines.

The beginnings of such adjustment are, however, to be seen in the laws of New York,[1] New Jersey, and Pennsylvania, and a Massachusetts regulation, governing work in compressed air. Under all of these codes not only are daily working hours regulated by the degree of pressure under which the work is done, but they are divided into two equal periods, the rest interval between which also varies according to the pressure, as follows:

If the pressure exceeds	*But does not exceed*	*Number of hours' work in 24*	*Interval between working periods*
Normal	21 pounds	8 hours	½ hour
21 pounds	30 pounds	6 hours	1 hour
30 pounds	35 pounds	4 hours	2 hours
35 pounds	40 pounds	3 hours	3 hours
40 pounds	45 pounds	2 hours	4 hours
45 pounds	50 pounds	1½ hours	5 hours

(*c*) *Factories and Workshops.* As indicated in the preceding section, when legal restrictions do not directly affect public health or safety, but apply mainly to the health of the individual adult male workers, we find fewer legal regulations in America. In foreign countries, especially since the end of the European War, many laws have been passed establishing an eight-hour day and generally a week of forty-eight hours or less in the majority of industrial occupations. The laws are about equally divided between two types—those which specify in detail the occupations to which they apply and the exceptions to be permitted, and those which merely lay down the general principle in the law and leave detailed application and exceptions to be determined by administrative orders.[2] The first annual session of the International Labor Conference arranged for by the peace treaty, which met at Washing-

of Queensland, 1925, with similar provision, sets the temperature limit at 83°F.

[1] The New York law was amended in 1925 to reduce still further the length of work periods.

[2] Laws of the former type are found in Czecho-Slovakia, the Netherlands, Norway, Switzerland, Uruguay, and New Zealand; those of the latter sort in France, Germany, German Austria, Spain, Poland, Portugal, Ecuador, Panama, Finland, and Russia. Several of the Australian states specify that their arbitration courts must not exceed the eight-hour limit in making awards.

ton in November, 1919, headed its program of subjects for discussion with the eight-hour day and adopted a draft convention for submission to its members through the League of Nations. This provides for the enactment of legislation for an eight-hour day and forty-eight hour week in mines, factories, building, and transportation. Provision is made for overtime in certain emergencies, to be paid for at least at one-and-one-quarter times the regular rates of pay, for some flexibility in daily hours by agreement between labor and employers' organizations, and for a possible fifty-six-hour week in continuous industries. On account of alleged tardy development of industry, a fifty-seven-hour week was allowed in most Japanese factories and a sixty-hour week in India, while Greece and Roumania were allowed to delay in putting the eight-hour limitation into effect. The enforcement of this convention, together with the recent spread of eight-hour laws, will put the industrial workers of Western Europe practically on an eight-hour basis through legislation.

In contrast to the European situation, in the United States, Alaska alone has not enacted any general eight-hour legislation. There the legislature in 1917, in response to an initiative vote of the people, passed a comprehensive eight-hour law,[1] which was however, shortly thereafter declared unconstitutional.[2] The general declarations that eight or ten hours shall constitute a day's work in the absence of special contracts or agreements, found in the constitutions or statutes of about half the states, amount merely to a statement of principles. They have practically no effect upon the actual length of the working day, since they do not attempt to prevent either implied or written contracts for overtime, nor do they often provide a penalty for violation.

About a dozen states have succeeded in regulating by legislation the hours of adult males in one or more employments in factories and workshops. Eight-hour laws are found for electric plants in Arizona, for stationary firemen in Louisiana, for plaster and cement mills in Arizona and Nevada, while a ten-hour limit is placed in saw-and planing-mills in Arkansas, in bakeries in New Jersey, in brickyards in New York, in

[1] Alaska, Laws 1917, C.55.
[2] See "Constitutionality," p. 286.

certain textile mills in Georgia, Maryland, and South Carolina, and in a few states in drug and grocery stores. An eight-hour law, permitting limited overtime and not to go into effect until similar legislation is adopted in adjoining states, was enacted in Oregon in 1923.

Mississippi in 1912[1] and Oregon in 1913[2] adopted ten-hour laws and North Carolina in 1915[3] an eleven-hour law for all workers in manufacturing establishments. The North Carolina act excepts engineers, firemen, and certain other groups, while the Oregon statute allows three hours overtime daily at time-and-one-half wage rate. The Mississippi act was amended in 1924[4] to provide a fifty-five hour weekly limit.

c. Constitutionality. The two main legal principles involved in the constitutionality of maximum hour laws for women are equally important in connection with hour legislation for men. There is, on one side, the right of free contract for the disposal of one's own labor, and on the other the possible limitation of this right by the police power in the interests of social welfare. While it is now definitely settled that hour legislation for women is a rightful exercise of the police power of the state, the question is somewhat more uncertain in regard to hour laws for men. The constitutional status of the latter type of laws seems to depend on the purpose of the restriction and the class of workers covered. The courts usually uphold hour legislation which applies to public work, and to private business if the public safety is directly concerned, as with railroad trainmen, but opinions are conflicting on hour legislation for private employment where the safety, health, or welfare of the employees alone is involved.

Although several earlier decisions were unfavorable, in 1903 the United States Supreme Court upheld the Kansas Act of 1891, which established the eight-hour day in public employment both for direct and for contract work. "It belongs," said the court, "to the state, as guardian and trustee for its people, and, having control of its affairs, to prescribe the con-

[1] Mississippi, Laws 1912, C. 157.
[2] Oregon, Laws 1913, C. 102.
[3] North Carolina, Laws 1915, C. 148.
[4] Mississippi, Laws 1924, C. 314.

ditions upon which it will permit work to be done on its behalf, or on behalf of its municipalities."[1]

But while this decision supported the right of the state to control the action of its political subdivisions, state courts have not always followed its precedent on this point. In New York, for instance, this right was denied on the ground that municipal corporations are local bodies supported by local taxes, and are therefore on the same footing as private corporations.[2] In order, therefore, that there might be no future question on these points, the people of the state in 1905 amended their constitution expressly giving the legislature the power to fix all conditions of labor on public work whether done directly by the state or through contractors.[3] A similar amendment to the Pennsylvania constitution was voted down by the people in 1913. But on the whole, decisions have in recent years followed the main principles of the decision in Atkin *v.* Kansas.

In private employments, when the element of public safety is clearly and directly involved, as in most legislation regulating working hours in transportation, the courts have raised but few objections. Though during the early days of this class of legislation opinions varied considerably, the close connection between the safety and welfare of the traveling public and the physical condition of these employees has now been so well established that recent decisions almost invariably uphold the main principle of hour limitation as a valid exercise of the police power. In a decision given in 1911, the United States Supreme Court said: "The length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends. . . . In its power suitably to provide for the safety of employees and travelers, Congress was not limited to the enactment of laws relating to mechanical appliances, but it was also competent to consider, and to endeavor to reduce the dangers incident to the strain of excessive hours of duty on the part of engineers, conductors, train despatchers, teleg-

[1] Atkin *v.* Kansas, 191 U. S. 207, 24 Sup. Ct. 124 (1903).
[2] People *ex rel.* Cossey *v.* Grout, 179 N. Y. 417, 72 N. E. 464 (1904).
[3] New York, Laws 1906, C. 506. Upheld in People *ex rel.* Williams Eng. & Cont. Co. *v.* Metz, 193 N. Y. 148, 85 N. E. 1070 (1908).

raphers, and the persons embraced within the class defined by the act." [1]

Various related questions arise from time to time involving such points as the definition of emergency,[2] and the liability of the railroad company in case of accidents connected with overtime work. The courts have also had to consider the legality of the so-called "split trick." They have held that under the federal law the permitted hours of service may be divided into two parts within the same twenty-four hours.[3] In some cases this rule has led to much practical difficulty in the enforcement of the law, and a number of cases have been brought into court in which train crews have had their time of service extended beyond the maximum sixteen hours by temporary "releases" at places where trains were delayed *en route*. In a recent case the United States Circuit Court of Appeals for the ninth circuit guarded against an abuse of this practice by ruling that such a "release," to constitute a break in the continuity of service, must be sufficiently long to insure "a substantial and opportune period of rest" in all circumstances. Whether or not a "release" was for such a period was a question for the jury to decide in each case.[4]

Another important point frequently raised is the division of jurisdiction between state and federal laws. In case of conflict between the provisions of a state law and the federal act, the higher courts have practically always given precedence to the federal act, largely because of the difficulty of separating interstate from intrastate operations. But where no conflict exists, both laws may operate at the same time. Among the later decisions on this subject is a New York case, carried to the United States Supreme Court, involving the validity of the New York eight-hour law for train-despatchers. In this

[1] Baltimore and Ohio Railroad Co. *v.* Interstate Commerce Commission, 221 U. S. 612, 31 Sup. Ct. 621 (1911).

[2] United States *v.* Chicago, Milwaukee and Puget Sound R. R. Co., 197 Fed. 624 (1912); United States *v.* Kansas City Southern R. R. Co., 202 Fed. 828, 121 C. C. A. 136 (1913).

[3] United States *v.* Atchison, Topeka and Santa Fe Railway Co., 220 U. S. 37, 31 Sup. Ct. 362 (1911). In this decision the United States Supreme Court upheld the practice of a railroad company in requiring telegraph operators to be on duty from 6.30 A.M. to 12 M. and again from 3 to 6.30 P.M.

[4] United States *v.* Southern Pacific Co., 136 C. C. A. 351, 220 Fed. 745 (1915).

case the New York court held that the act was a valid exercise of the police power, and that no conflict existed between state and federal authority since the federal law limiting hours to nine a day "prescribed a general minimum limit of safety applicable to average conditions throughout the country," whereas the New York statute limiting hours to eight a day "simply supplemented" the federal act by raising the limit of safety in response to conditions prevailing within the borders of the state.[1] On appeal the United States Supreme Court on May 25, 1914, gave a unanimous opinion denying the constitutionality of the New York act, as in direct conflict with the federal act, holding that "Where there is conflict the state legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority the regulating power of the state ceases to exist."[2] On the point made by the New York court that the state law merely supplemented the federal act, the federal court said: "It is not that there may be a division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it. . . . It [the federal act] admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety and of the cost and burden which the railroad must endure to secure it." Another contention made by the New York court was that in any case the federal law had not become operative at the time of the alleged violation, November 1, 1907. But the federal court said that it "considered it elementary that the police power of the state could only exist from the silence of Congress upon the subject and ceased when Congress acted or manifested its purpose to call into play its exclusive power."[3] The important question as to whether the New York act was a valid exercise of the control reserved by the state over corporate charters was also raised in these cases, but no conclusive decision was reached in either court.

The Adamson law was treated by the majority of the Su-

[1] People *v.* Erie R. R. Co. 198 N. Y. 369, 91 N. E. 849 (1910). See also Smith *v.* Alabama, 124 U. S. 465, 8 Sup. Ct. 564 (1888).

[2] Erie R. R. Co. *v.* New York, 233 U. S. 671, 34 Sup. Ct. 756 (1914). See also Minnesota Rate Cases, 230 U. S. 352, 33 Sup. Ct. 729 (1913).

[3] See also Northern Pacific Ry. *v.* Washington, 222 U. S. 370, 32 Sup. Ct. 160 (1912).

preme Court as an extension of hour legislation for interstate railroad employees, the Chief Justice declaring that "the authority to permanently establish it [the basic eight-hour day] is so clearly sustained as to render the subject not disputable." The ground for the objection of the four dissenting judges was that the measure was not an hour but a wage-fixing statute. The majority upheld the regulation of wages contained in the law on the ground that the constitution gave Congress power over interstate commerce to preserve it, and that any act necessary to its preservation is constitutional. They also characterized the law "as the exertion by Congress of the power which is undoubtedly possessed to provide by appropriate legislation for compulsory arbitration." [1]

The right to limit the working hours of men in mines has been practically undisputed since the case of Holden *v.* Hardy in 1898 upholding the Utah eight-hour law for this group of workers.[2] This case has such an important bearing upon the right to limit the hours of adult men in general employments that it should be given special attention at this point. In connection with the custom of passing upon the validity of state legislation under the fourteenth amendment to the federal constitution, the court said: "This court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the states methods of procedure which at the time the constitution was adopted, were deemed essen-

[1] Wilson *v.* New, 243 U. S 332, 37 Sup. Ct. 289 (1917).

[2] Holden *v.* Hardy, 169 U. S. 366, 18 Sup. Ct. 383 (1898). Immediately after this favorable decision by the United States Supreme Court, Colorado enacted a law identical with the Utah statute. One year later the Colorado Supreme Court in an elaborate opinion refused to conform to the opinion of the United States Supreme Court and declared the act unconstitutional on the ground that public welfare was not involved, since only the employee himself is injured by long hours (*In re* Morgan, 26 Colo. 415, 58 Pac. 1071 (1899). So determined were the miners of Colorado to have the shorter workday guaranteed them by legislation that they succeeded in 1902 in securing an amendment to the constitution providing for the eight-hour day (Art. 5, Sec. 25a). Despite this fact, it was not until 1905 that the legislature finally enacted an eight-hour law. Not until 1911 was an enforceable act passed, which was, however, immediately subjected by the efforts of the operators to a referendum vote. Not until 1913 was the question finally settled and an effective act in force. These unfortunate events have played no small part in creating the bitter strikes of coal miners which occurred in Colorado in 1913-1914.

tial to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests, while, on the other hand, certain other classes of persons (particularly those engaged in dangerous or unhealthful employments) have been found to be in need of additional protection."

Two far-reaching conclusions were set forth in the opinion given in this case. The first involved the question—Are the health dangers connected with the occupation of mining sufficiently serious to justify the legislature in separating out this class of employees and interfering with the right of free contract under the police power of the state? On this point the court said: "But if it be within the power of a legislature to adopt such means (provisions for proper ventilation, speaking-tubes, protection of cages, etc.) for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. It is as much for the interest of the state that the public health should be preserved as that life should be made secure. . . . While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of noxious gases generated by the process of refining or smelting."

The second conclusion relates to inequality of bargaining power, already treated in Chapter I.

As to regulation of men's hours in general factory employments, the constitutionality of a ten-hour daily limit is now assured through favorable action by the United States Supreme Court on the Oregon ten-hour law.[1] Eight-hour legislation has not yet been passed on by the highest court in the land, and its status remains uncertain. In the argument against the ten-hour law, it was contended that the measure was not a

[1] Bunting *v.* Oregon, 243 U. S. 246, 37 Sup. Ct. 435 (1917).

health but a wage law, as it permitted three hours of overtime at increased rates of pay. But the court ruled that, "apparently the provisions for permitting labor for the overtime on express conditions were made in order to facilitate the enforcement of the law, and in the nature of a mild penalty for employing one not more than three hours overtime." The decision of the state court upholding the act was quoted to the effect that the hours in some other countries were less than those prescribed by the act, and that a ten-hour day was sanctioned by custom in local industries, so that the regulation could not be held to be unreasonable or arbitrary. The contention that the law discriminated against factories and other employments covered by requiring them to pay more for labor was disposed of by the fact that the law was an hours and not a wages act.

The decision in effect reversed the ruling of the court twelve years before in the celebrated Lochner case, in which a New York law providing a ten-hour day for bakers was overthrown.[1] A careful reading of the earlier opinion discloses, however, that the court did not feel sufficient evidence was presented to it indicating the injurious effect upon the health of bakers to justify the state in singling them out and interfering with their freedom of contract. Evidence on the health dangers of long hours and the beneficial effects of the short workday was amply supplied in the Oregon case in a brief prepared by Felix Frankfurter and Josephine Goldmark, similar in nature to the Brandeis-Goldmark briefs presented in the minimum wage and women's hour law cases.[2]

The Mississippi law of 1912,[3] limiting hours of all employees engaged in manufacturing or repairing to ten a day, but excepting cases of emergency or public necessity, was three times taken to the state supreme court and was each time upheld. The court held that it was not bound by Lochner *v.* New York, since in the law decided against in that case no provision was made for emergencies under which the "lightest violation of the provisions of the act would be innocent." The court also called attention to the physical and mental strain of present-day industry as compared with earlier methods. One of the few in-

[1] Lochner *v.* New York, 198 U. S. 45, 25 Sup. Ct. 539 (1905).
[2] See pp. 225 and 261.
[3] Mississippi, Laws 1912, C. 157.

stances where a court has specifically recognized the right to leisure occurred in this case, when the court said:

"We pause here to remark the notable fact that it is rare for the seller of labor to appeal to the courts for the preservation of his inalienable rights of labor; this inestimable privilege is generally the object of the buyer's disinterested solicitude. Some day, perhaps, the inalienable right to rest will be the subject of litigation, but as yet this phase of individual liberty has not sought shelter under the state or federal constitution."[1]

The constitutionality of eight-hour legislation for men in general employments had not, up to January, 1926, been passed upon by the United States Supreme Court. The early unenforceable eight- and ten-hour laws were generally upheld by the courts, but when Nebraska in 1891 attempted to make such a law enforceable by requiring double pay for all work in excess of eight hours, farm and domestic labor being excluded, the law was declared unconstitutional by the supreme court of the state in 1894, both on the ground of class legislation and as an interference with the right of free contract.[2]

In 1912 the Supreme Court of Louisiana declared an hour law unconstitutional on the ground of unwarranted classification of industries. This act limited the hours of stationary firemen to eight a day in manufacturing or business establishments, offices, or warehouses operating day and night, but exempted certain other industries, as the petroleum, sawmill, and cotton-gin industries, and sugar plantations.[3] This classification of industries appeared to the court to be purely arbitrary, since it was difficult to see why long hours were not as injurious in sawmills as in warehouses or offices. On this point the judge said: "There is no suggestion in the record that the occupation of stationary firemen is dangerous or unhealthy to such a degree as to warrant the interference of the state. . . . The toil *per se* could not have warranted the interference of the legislature because it permitted unlimited toil in the plants excepted from the operation of the act. Whatever

[1] State *v.* J. J. Newman Lumber Co., 102 Miss. 802, 59 So. 923; 103 Miss. 263, 60 So. 215 (1912).
[2] Low *v.* Reese Printing Co., 41 Neb. 127, 59 N. W. 362 (1894).
[3] Louisiana, Laws 1912, No. 245.

may have been the motive for the passage of the act, we are satisfied that it was not based on health considerations."[1]

Here again the court did not feel that sufficient evidence was presented to justify the classification of industries as contained in the law, and after this decision the legislature amended the original law, making it apply to all stationary engineers in cities with a population of 50,000 or more.[2]

The Alaskan eight-hour law, which covered all workers, including partners and corporation officials, except in certain emergencies, was declared unconstitutional in 1918 in a federal circuit court.[3] The judge held that the statute, applying as it did to all occupations alike, was not shown to be a health measure, but was a "meddlesome interference" with individual rights. By interfering with the right to earn a living, which is a property right, it was held to have violated the fourteenth amendment to the federal constitution. In addition, it was declared to be class legislation, which was forbidden by the organic act creating the territory. On similar grounds the Solicitor-general of the United States declined to allow the case to be appealed to a higher court, so that no final test was had on this, the only enforceable universal eight-hour law covering private employment enacted in America up to the beginning of 1926.

Even though the constitutionality of eight-hour laws for men in general is still undetermined, the Supreme Court decision in the Oregon ten-hour case opens the way for much larger regulation of the work of adult males than has heretofore been undertaken in this country. Equality of bargaining power may be secured in some cases by freeing labor organizations from existing restrictions upon acts, not in themselves unlawful, which are necessary to carry out effectively the purposes of organization.[4] But where organization fails to protect any considerable group of workers, or where this protection is not provided in a reasonable manner, the substitution of the power of the state becomes a justifiable and necessary interference with the right of free contract, for the protection of health, welfare, and citizenship. Such interference, an analysis of the

[1] State *v.* Barba, 132 La. 768, 61 So. 784 (1913).
[2] Louisiana, Laws 1914, No. 201.
[3] U. S. *v.* Northern Commercial Co. and George A. Coleman (1918).
[4] See "Justification of True Collective Bargaining," pp. 125-128.

various decisions shows, has been generally held legitimate by the courts.

2. Rest Periods

In spite of the considerable development of maximum hour legislation in this country, only slight attention has been paid—except for the recent agitation for one day of rest in seven and some efforts to exclude women and children from night work—to the important question of legal rest periods.

(1) *Daily Rest and Meal-times*

The most common form of legal requirement for daily rest periods in private employments is found in the laws regulating hours of labor for women. A number of states merely specify that from one-half to one hour shall be allowed for the noon meal. Under such laws which do not restrict the number of hours of continuous employment, women have been employed, with no time for rest and meals, for periods so long as to be definitely harmful to their health. Several states, therefore, make the provision more effective by prescribing that the noon rest period shall be given after six or six and one-half hours' work. If overtime is worked in the evening, a few states require a rest period of twenty or thirty minutes after 6 or 7 P.M. Most of the laws apply to all females and a few apply both to boys and to girls, but the inclusion of adult men workers is very rare.

In addition to the noon rest period a few employers have voluntarily granted to employees, especially to women, a fifteen- or twenty-minute rest in the middle of the morning and again in the afternoon; but no legal regulations to this effect exist in America. In European countries, however, the beneficial effects of these shorter breaks in the workday have been recognized in legislative enactments. In Belgium, for instance, women in fruit-preserving must be allowed at least fifteen minutes' rest in every five-hour work period in addition to the noon rest. In the chocolate and confectionery industry a second rest period of fifteen minutes in addition to the noon rest must be allowed if the working day is between nine and ten hours long, and a

third rest period of the same length must be given if the hours exceed ten. Such rest periods may, under the increasing strain and complexity of modern industry, add much to both the physical welfare and the efficiency of the worker.

For men workers in America a daily rest period is occasionally required by laws in the interest of health or public safety. Thus a daily period as well as the maximum limit of daily hours is fixed by law for railroad employees. Trainmen must be allowed ten hours' rest after sixteen hours' consecutive employment, but if they have been at work for an aggregate of sixteen hours with brief intervals between, the rest period need be only eight hours. Several states make no distinction between consecutive and aggregate employment, but set a fixed period of eight or ten hours' rest after sixteen hours of work, while a few other states require this rest period after thirteen, fourteen, or fifteen hours on duty. In addition, a few states, including Massachusetts, Maryland, and New York, have enacted laws requiring that telegraphers, switchmen, and others directing the movement of trains be given a rest period of twenty-four consecutive hours twice each month, without reduction of pay.[1] In New York, New Jersey, Pennsylvania, and Massachusetts, where tunnel and caisson operations have been scientifically regulated, the hours of workers in compressed air must be equally divided by a rest period varying in length from one-half hour to five hours, according to the degree of air pressure.[2]

(2) *Night Work*

Night-work legislation applies only to women and minors, there being no regulation in the United States of the work of adult men in this respect.

The investigations of the International Association for Labor Legislation, begun in 1901, showed that serious physical and moral dangers surrounded the work of women at night. It

[1] The New York law was, however, held unconstitutional by the state appellate division, third department, in People *v.* N. Y. C. & H. R. R. R. Co., 163 App. Div. 79 (1914), on the ground laid down by the United States Supreme Court in Erie R. R. Co. *v.* New York, 233 U. S. 671, 34 Sup. Ct. 756 (1914), that "there can be no valid state legislation covering the same field where the federal authority has asserted its right to act." (See pp. 280-282).

[2] See table, p. 276.

was clearly demonstrated that recovery from fatigue is obtained mainly through rest and sleep, and that sound sleep can rarely be secured in the daytime, especially in the noisy and crowded homes of many working people in industrial cities. The lack of sunlight tends to produce anæmia and tuberculosis and to predispose to other ills. Night work brings increased liability to eyestrain and accident. Serious moral dangers also are likely to result from the necessity of traveling the streets alone at night, and from the interference with normal home life. From an economic point of view, moreover, the investigations showed that night work was unprofitable, being inferior to day work both in quality and in quantity. Wherever it had been abolished, in the long run the efficiency both of the management and of the workers was raised.[1] Furthermore, it was found that night-work laws are a valuable aid in enforcing acts fixing the maximum period of employment.

As a result of these investigations, the association called, through the Swiss Federal Council, in Berne, in 1906, a conference on women's night work. This conference was attended by representatives of fourteen leading European powers,[2] and an international convention was drawn up by which the various countries agreed to provide as soon as possible that women industrial workers over eighteen be allowed at least eleven consecutive hours of rest at night, seven of which must fall between 10 P.M. and 5 A.M. In practically all of the signatory countries the necessary legislation was enacted and the prohibition was in force by January 1, 1912. By 1916 several of these countries had enacted legislation far beyond the provisions of the treaty and a number of other states and dependencies, including India and Argentine, had passed similar laws. The International Labor Conference which met in Washington in November, 1919, reaffirmed in strengthened form the Convention forbidding women's night work.[3] Where the

[1] See the brief in the case of People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 639 (1915), by Louis D. Brandeis and Josephine Goldmark, pp. 260-307.

[2] Austria, Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, Luxemburg, Portugal, Spain, Sweden, Switzerland, and the Netherlands.

[3] International Labor Office, *Official Bulletin,* Vol. 1, p. 424. For list of countries which have ratified this Convention see *Industrial and Labour Information,* latest chart on progress of ratifications.

war emergency had caused the temporary removal of the usual legal restrictions on such work, its evil effects had been once more demonstrated.[1] Nearly all industrial countries in the world have now enacted legislation beyond the provisions of this Convention. Most European countries permit exceptions under certain conditions, especially when a delay in handling perishable materials would cause great financial loss, but such exceptions are, as a rule, very carefully safeguarded. The Mexican Constitution of 1917 prohibits night work by women and minors under sixteen between 10 P.M. and 6 A.M. In 1923, five countries of Central America signed at Washington a Convention for unification of protective labor laws[2] which agrees to prohibit within their territory employment of women and minors under fifteen between 7 P.M. and 5 A.M.

While the prohibition of night work by women is by no means universal in the United States, by 1926 more than a dozen states forbade some form of it,[3] and its dangers are coming to be better realized by the public. The standards for women's employment issued by the Women in Industry Service of the federal Department of Labor, which were based on war-time necessities, though issued in December, 1918, included prohibition of the work of women between 10 P.M. and 6 A.M. Massachusetts was the pioneer, forbidding in 1890 the employment of women in manufacturing and mechanical establishments between 10 P.M. and 6 A.M.[4] In 1907 the law was extended to forbid work in textile mills between 6 P.M. and 6 A.M.,[5] and Wisconsin, by administrative order of 1917, forbade work in manufactories and laundries for the same period —the strictest regulation found in the United States. Not one of the statutes, however, is an inclusive night-work prohibition.

[1] See Great Britain, Ministry of Munitions, Health of Munition Workers Committee, *Memorandum No. 4,* "Employment of Women," 1916.

[2] Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica. International Labor Office, Legislative Series of 1923, International 2. By March, 1926, this Convention had been ratified by Nicaragua and Honduras.

[3] California, Connecticut, Delaware, Indiana, Kansas, Massachusetts, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, Wisconsin.

[4] Massachusetts, Laws 1890, C. 183.

[5] *Ibid.,* Laws 1907, C. 267.

The Indiana law, for example, applies only to factories,[1] while the South Carolina law applies only to stores.[2] The New York statute covers factories, stores, laundries, restaurants, elevators, messenger service, and street railways,[3] while that of Nebraska omits the last three occupations but includes hotels and offices in cities of certain classes.[4] There is no statute law in Oregon forbidding night work, but the industrial commission by administrative order forbids it in mercantile occupations.[5] The Kansas commission has taken similar action for stores, factories, and public housekeeping occupations.[6]

In some cases, however, the laws have been so worded as to prove unenforceable. A Connecticut law of 1913 simply forbade the employment of women in certain lines of work "after ten o'clock in the evening."[7] Therefore, certain manufacturers observed the letter of the law by requiring women to stop work at 10 P.M., but calling them to their tasks again from midnight till early morning. It is reported that this practice became general in munition plants during the boom which began in 1915. It was not until 1919 that Connecticut passed an effective law specifying the entire period during which night work was forbidden.[8]

Another small group of states recognize the strain of employment at night for women and seek to discourage it by shortening the period which may be so worked. The Maryland statute is typical of this class of legislation. While by day women may work up to ten hours, if any part of their work falls between 10 P.M. and 6 A.M. the hours of employment are limited to eight.[9] With these exceptions, which are confined to a few states and a few industries, the night work of women is entirely unregulated in America.

[1] Indiana, Annotated Statutes 1908, Sec. 8021.
[2] South Carolina, Code, 1912, Sec. 430.
[3] New York, Laws 1921, C. 50, Secs. 181 to 185.
[4] Nebraska, Statutes 1907, Sec. 6940 (as amended by Laws 1913, C. 151).
[5] Industrial Welfare Commission of Oregon, Orders Nos. 37 and 38, 1919.
[6] Industrial Welfare Commission of Kansas, Orders Nos. 13, 14, and 15, 1922.
[7] Connecticut, Laws 1913, C. 179.
[8] Connecticut, Laws 1919, C. 195.
[9] Maryland, Public General Laws 1911, Sec. 14.

Perhaps the slow progress of American laws forbidding night work of women may be in part accounted for by the doubtful attitude of certain of the courts. In 1907, eight months after the international agreement to forbid night work, the New York State Court of Appeals declared such a prohibition unconstitutional.[1] The doctrine of entire freedom of contract between employer and employee applying alike to men and to women was emphasized, and the court was unable to trace any connection between the law and the promotion of health. No account was taken of inherent sex differences between men and women. Since this decision, legislatures have naturally been reluctant to pass night-work laws. As the dangers of night work for women become more widely known, however, judicial opinion seems to be changing in respect to the constitutionality of prohibiting it. A brief by Mr. Brandeis and Miss Goldmark, bringing out the facts, was presented in defense of the new night-work law passed by New York in 1913. The highest state court, the court of appeals, unanimously reversed its former decision, and, taking cognizance of the facts presented to it in regard to modern industrial conditions, upheld the law as a necessary protection to the health of women, both for their own sakes and for the sake of posterity.[2] In 1924 the United States Supreme Court upheld the New York Statute of 1917 forbidding night work in restaurants.[3]

The injurious effects of night work are even more pronounced on children, whose strength and powers of resistance are not fully developed, than they are on women workers. The first of the annual International Labor Conferences, in 1919, recommended to its members the enactment of laws forbidding the employment of children under eighteen at night, with a limited number of exceptions for those between sixteen and eighteen.[4] In the United States children, fortunately, are bet-

[1] People *v.* Williams, 189 N. Y. 131, 81 N. E. 778 (1907).
[2] People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 639 (1915). See also chap. IX, "Administration."
[3] Radice *v.* New York, 264 U. S. 292, 44 Sup. Ct. 325 (1924).
[4] International Labor Office, *Official Bulletin*, Vol. 1, p. 433. For list of states which have ratified this Convention see *Industrial and Labour*

ter protected with regard to night work than women, there being no constitutional difficulty in their case. The standard proposed by the International Labor Conference has hardly been reached, however. By January, 1926, all except three states—Nevada, Utah, and South Dakota—prohibited night work in factories, generally between 7 P.M. and 6 A.M., for children under sixteen.[1] Canneries are often excepted. About three-fourths of the states and the District of Columbia extend the prohibition to cover stores and about twenty states to all occupations. A number of states extend the age limit to eighteen or to twenty-one, usually setting the age higher for girls than for boys. The greatest abuses in connection with the night work of children have been found in textile mills and glass works, and on account of the strong opposition of the manufacturers, the states where conditions were worst frequently were the last to pass the necessary legislation.

Special regulation of night work for adult men is of comparatively recent development. The Mexican Constitution of 1917, Art. 123, limits night work to seven hours as compared with eight hours for day work. Decree of 1917 and subsequent labor codes of Russia[2] make the same regulations, except in continuous processes, where the length of shifts is uniformly eight hours, but for each hour between 10 P.M. and 6 A.M. remuneration is eight-sevenths of the rate for day work. The hour laws of Czecho Slovakia and Poland[3] enacted in 1918 and 1919 forbid, in principle, work between 9 or 10 P. M. and 5 A. M., except in continuous processes or cases of public necessity. The 1919 hour law of the Netherlands[4] sets the limits of the working day from 7 A. M. to 6 P. M., except on Saturday when work ends at 1 P. M. This law, however, has gone into force only for factories and work shops and allows exception by public administrative order or by special permit.

Information, latest chart on progress of ratifications. The conventions forbidding night work for women and young persons apply only to industrial undertakings.

[1] Texas sets the age limit at fifteen years.

[2] International Labor Office, *Legislative Series, 1922,* Russia I, p. 14.

[3] International Labor Office, *Studies and Reports,* Series D, No. 12 and *Legislative Series, 1920,* Poland I, p. 4.

[4] International Labor Office, *Studies and Reports,* Series D, No. 11.

The most general prohibition of night work for men is that in bakeries. This is due to the fact that such work is unhealthful and not really necessary, but customary owing to popular demand for warm bread for breakfast and to intense competition among bakers. Since 1909, Norway has prohibited work in bakeries from 6 P. M. to 6 A. M. Since 1908, Finland has made similar prohibition between 9 P. M. and 6 A. M. and Italy between 9 P. M. and 4 A. M. Between 1918 and 1925, about a score of countries, including France, Germany, Russia, Switzerland, Belgium, Chili, Uruguay, and New South Wales, enacted similar legislation providing for cessation of night work in bakeries for a period of from six to ten hours.[1] In other countries like regulations have been made by municipalities. The International Labor Conference adopted, provisionally in 1924 and finally in 1925, a Convention which prohibits baking of commercial products, with certain exceptions, at night for a period of seven consecutive hours. The prohibition includes employers and one-man bakers, as well as employees, a point much discussed and meeting with considerable opposition.[2]

(3) *Saturday and Legal Holidays*

While more than a dozen states have made Saturday afternoon a legal holiday, few, if any, have made effective provision for the enforcement of this or other laws fixing legal holidays. The extension of the Saturday half-holiday in private employment during recent years is often due to voluntary action by employers. The short workday on Saturday is more often found in summer than in winter, and more often among clerical and merchantile[3] than among industrial workers. Occasionally, strong labor organizations, such as those in some of the building and garment trades, have secured

[1] *International Labour Review,* "Night Work in Bakeries," April and May, 1924, pp. 558 and 680.

[2] *International Labour Review,* August, 1925, pp. 153 and 185. For favorable decision of Permanent Court of International Justice on inclusion of working employers, see International Labor Office, *Industrial and Labour Information,* August 2, 1926, p. 175.

[3] The Consumers' League has been especially active in securing the Saturday half-holiday for salesgirls. In 1914, it induced for the first time most of the large New York stores to close all day Saturday during July and August.

the forty-four-hour week, which means the Saturday half-holiday. A 1925 official report on union scale of wages and hours [1] covering over 775,000 wage-earners in organized trades stated that 79.5 per cent of these workers had gained the forty-four-hour week or a shorter one. The Census of Manufactures for 1923 reported 865,000 wage-earners working in establishments where the prevailing hours per week were forty-four or less.

But probably women's hour laws have been one of the strongest single influences in securing, though indirectly, a shorter workday on Saturday to certain workers. During the past decade many efforts to improve standards took the form of cutting down the sixty-hour week, though still retaining the ten-hour day; this in actual operation often meant a Saturday half-holiday. By 1926 about a dozen states allowed ten or ten and a half daily hours of work, but set a weekly limit of fifty-four to fifty-eight hours, while half a dozen by statute or administrative orders had adopted the same principle with the higher standard of eight and a half or nine hours a day and a forty-eight- to fifty-hour week.[2] Several laws also permit an increase in daily hours to secure a shorter workday one day in the week.

In public employment, as in private, the Saturday half-holiday has become the established practice for clerical employees. In addition, a few laws are found extending it to laborers as well. For instance, Massachusetts in 1914 by popular vote provided a Saturday half-holiday without loss of pay for all laborers, workmen, and mechanics employed permanently by the state or by any of its boards or commissions.

In continental Europe the working week of five and a half days is generally known as "the English week" because it was widely enforced by law in England earlier than in any other country. Thus in Great Britain laws are found forbidding the employment of women and young persons on Saturday after 1 P.M. in textile mills, and for more than eight hours in non-textile factories and workshops. So important is the Saturday half-holiday considered in Europe that it was proposed as a subject for international treaty at the meeting of

[1] United States Bureau of Labor Statistics, *Bulletin No. 404*, 1925, p. 8.
[2] See p. 257.

the International Association for Labor Legislation in 1912, and discussed at the International Labor Conference of 1921. The International Labor Office reported that nine countries of the first importance had given legislative sanction of varying degrees to the custom of extending the weekly rest period beyond twenty-four hours.[1]

(4) *One Day of Rest in Seven*

It has been pointed out[2] that under modern industrial conditions many thousands of wage-earners are obliged to work seven days a week, a practice which deprives them of proper leisure and tends to break down their health. Remedial legislation in the United States has been of two kinds. The type of law found in nearly all the states is a descendant of the old Puritan "blue laws" and attempts to forbid all Sunday work, primarily from religious motives. Such laws, however, drafted before the rise of modern industry, generally fail to protect either the worker or the Sabbath. Many of them are meaningless because filled with exceptions; others remain dead letters on the statute books; all fail to provide proper means of enforcement. A few enforceable laws have been passed prohibiting Sunday employment in a single occupation, generally that of bakers or barbers, but have generally failed in their purpose because the courts have tended to declare them unconstitutional as making an arbitrary classification of industries, which violates the equal protection clause of the fourteenth amendment to the federal constitution.[3] But it is hardly practicable or desirable, at the present day, to realize the aim of the old-time Sunday law and stop all Sunday work. Public necessity demands the continuous operation of such services as telephone and telegraph lines, heat, light, and power plants, steam and electric railways, and hotels and restaurants. Another large group of industries, important among which are iron and steel works, cement factories, paper and pulp, flour and grist mills, usually operate continuously

[1] International Labor Office, *Questionnaire IV,* 1921, pp. 13-14.
[2] See p. 233.
[3] See Lindley M. Clark, "Labor Laws Declared Unconstitutional," United States Bureau of Labor, *Bulletin No. 91,* November, 1910, pp. 951-952.

on account of technical requirements or sometimes simply for economy. To remedy this situation an entirely new form of law has been devised which recognizes that much seven-day work is a necessity and that the objectionable feature is the seven-day worker. This type of law, therefore, simply requires that all employees be given a weekly day of rest, those employed on Sunday being given a free day at some other time in the week. Since such a law generally necessitates an addition of one-sixth to the working force, it tends to eliminate all unnecessary seven-day labor at the same time that it secures to every workman a weekly rest day.

This modern legislative movement began in Switzerland, where a law was passed in 1890 requiring each railway employee to be given, without loss of pay, fifty-two weekly rest days each year, seventeen of them to fall on Sunday. Between 1904 and 1911 enforceable rest-day measures were enacted in almost all the leading European countries. These laws generally name Sunday as the day of rest, but permit the operation of continuous industries on that day provided every employee gets some other day in the week free. As with many other classes of European labor legislation, only the general principle is laid down in the laws and special extensions or exceptions are largely determined by administrative rulings. The International Labor Conference of 1921 adopted a Convention providing for employees in industrial undertakings a weekly period of rest of at least twenty-four consecutive hours with a provision that each ratifying country be allowed to make its own exceptions,[1] and a recommendation that such period of rest should also be established in commercial undertakings. The Convention was made for one day of rest in seven, instead of specifically for Sunday, on account of both the exigencies of modern industry and varying religious customs. The importance of making the time of rest uniform for as many as possible of the workers of the same locality was, however, stressed. The Office reported that legislation providing for a weekly rest day in commerce and industry had already been enacted in twenty-nine countries, three of

[1] International Labor Office, *Official Bulletin*, Supplement Vol. IV, No. 23. For list of states which have ratified this Convention see *Industrial and Labour Information*, latest chart on progress of ratifications.

which also extended the provision to agricultural workers.[1] The 1920 law of Uruguay provides alternate systems of which employers may take their choice. Establishments must be closed upon Sunday, or one day of rest in rotation after five days of work must be provided. In certain cases a week day or longer rest at less frequent intervals may be substituted.[2] The Mexican Constitution of 1917 provides a weekly rest day for all employees. The Convention for unification of protective labor laws signed in 1923 by representatives of Central American countries[3] stipulates that each ratifying country shall enact legislation for a weekly rest day, where such does not already exist.

In the United States, six states and the federal government had by January, 1926, passed laws embodying this principle of one day of rest in seven. The federal law applies only to post-office employees.[4] The California and Connecticut statutes are nullified by exempting "any case of emergency,"[5] and in addition the Connecticut law specifically excepts a long list of occupations. The Michigan act applies only to interurban motormen and conductors, but is interesting as the first attempt to apply legislation of this type to transportation.[6] There remain the Massachusetts and New York acts of 1913[7] and the Wisconsin act of 1919,[8] which are similar in character and represent the most effective rest-day legislation yet passed in the United States. These laws apply to factories and mercantile establishments generally, but exclude certain occupations, such as janitors, watchmen, superintendents, foremen in charge, employees caring for live animals, maintaining fires or making repairs to boilers or machinery, and employees working not more than three hours on a seventh day in setting sponges in bakeries. In addition, Massachusetts excludes a long list of such occupations as those connected with newspaper work, restaurants, drug stores, livery stables or garages, the sale or distribution of gas, electricity, or milk, or any emer-

[1] International Labor Office, *Questionnaire IV*, 1921, p. 6.
[2] International Labor Office, *Report VII*, 1921, p. 124.
[3] See p. 290.
[4] United States, Laws 1911-1922, C. 389, Sec. 5.
[5] California, Code 1906, p. 722; Connecticut, Laws 1911, C. 162.
[6] Michigan, Laws 1919, No. 361.
[7] Massachusetts, Laws 1913, C. 619; New York, Laws 1913, C. 740.
[8] Wisconsin, Laws 1919, C. 653.

gency which could not reasonably have been expected. Wisconsin excludes all workers in milk and cheese plants and in flour mills. New York furthermore provides that if there are practical difficulties or unnecessary hardships in carrying out the law, the industrial commission may make variations "if the spirit of the act be observed and substantial justice done," and if the variations apply to all cases in which conditions are substantially the same.[1] An earlier amendment giving the commissioner of labor power to exempt necessarily continuous processes in which no one was employed for more than eight hours a day was declared unconstitutional by the court of appeals on the ground that it constituted a delegation of legislative power.[2] Under the clause just mentioned, however, which authorizes the industrial commission to grant variations from the law in case of practical difficulty or unnecessary hardship, provided substantial justice be done, the commission has from time to time, upon affirmative vote of the workers concerned, given exemption to necessarily continuous industries or processes where the eight-hour shift was in practice. As an aid to enforcement, employers are usually required to post a schedule containing a list of employees who are to work on Sunday, and designating the day of rest given them.

Investigations carried on by the American Association for Labor Legislation[3] in Massachusetts and New York after the law had been in force a year showed that its provisions were being generally observed and that many employees who had previously been obliged to work seven days a week were obtaining a weekly rest day without undue hardship to industry.

Women and children are also sometimes protected from seven-day labor through the provisions of those maximum hour laws which limit work to six days a week; other statutes seek to insure a weekly rest day by fixing weekly hours at six times daily hours or less. A few women's hour laws, however, leave the way open for seven-day labor by setting a daily but not a weekly limit, and two states, Arizona[4] and

[1] New York, Laws 1921, C. 50, Sec. 161.
[2] People *v.* Klinck Packing Co., 214 N. Y. 121, 108 N. E. 278 (1915).
[3] *American Labor Legislation Review*, December, 1914, pp. 615-626.
[4] Arizona, Penal Code 1913, Sec. 717.

Nevada,[1] invite it by making the weekly working period seven times the permitted daily hours.

It has been pointed out that Sunday laws applying to single occupations have sometimes been set aside as class legislation. General Sunday laws, however, have almost universally been upheld by the higher courts. Two distinct lines of reasoning have been followed. In the first half of the nineteenth century, beginning with a New York case in 1811,[2] the constitutionality of the laws was seldom directly involved, but was assumed on religious grounds in connection with the settlement of such questions as the scope of their application, the validity of contracts made on Sunday, the definition of "works of necessity or charity," or the classification of employments. In 1844 in North Carolina a case first came up which was sustained on the grounds of the police power of the state. For the next twenty years both lines of reasoning found their way into court decisions, but since 1866 the state courts in sustaining these laws have relied almost entirely upon the police power, and all acts passed upon by the federal Supreme Court have been upheld on this same ground.[3]

Representative of the reasoning by which Sunday laws have been held a legitimate exercise of the police power is the opinion of the state supreme court in Hennington *v.* Georgia,[4] later quoted by the United States Supreme Court:

"There can be no well-founded doubt of its being a police regulation, . . . for the frequent and total suspension of the toils, cares, and strain of mind or muscle incident to pursuing an occupation or common employment is beneficial to every individual, and incidentally to the community at large, the general public. Leisure is no less essential than labor to the well-being of man. Short intervals of leisure at stated periods reduce wear and tear, promote health, favor cleanliness, encourage social intercourse, afford opportunity for intro-

[1] Nevada, Laws 1917, C. 14.

[2] People *v.* Ruggles, 8 Johnson (N. Y.) 289, 5 Am. Dec. 335 (1811).

[3] As late as 1915 a general Sunday law was attacked in Oregon as class legislation and as a violation of the fourteenth amendment, but was upheld by the state supreme court (State *v.* Nicholls, 77 Ore. 415, 151 Pac. 473).

[4] Hennington *v.* State, 90 Ga. 396, 17 S. E. 1009 (1892); Hennington *v.* Georgia, 163 U. S. 299, 16 Sup Ct. 1086 (1896).

spection and retrospection, and tend in a high degree to expand the thoughts and sympathies of people, enlarge their information, and elevate their morals.

"If a law which, in essential respects, betters for all the people the conditions—sanitary, social, and individual—under which their daily life is carried on and which contributes to insure for each, even against his own will, his minimum allowance of leisure, cannot be rightfully classed as a police regulation, it would be difficult to imagine any law that could."

In only two states had a test case on one-day-rest-in-seven laws reached a higher court by 1926. *A priori* it would seem that these laws could be sustained as police power regulations as the Sunday laws have been, and in the main such a position was taken by the New York State Court of Appeals on February 5, 1915. The court said:[1] "Can we say that the provision for a full day of rest in seven for such employees is so extravagant and unreasonable, so disconnected with the probable promotion of health and welfare, that its enactment is beyond the jurisdiction of the legislature? . . . We have no power of decision of the question whether it is the wisest and best way to offset these conditions and to give to employees the protection which they need, even if we had any doubt on that subject. Our only inquiry must be whether the provision on its face seems reasonable, fair, and appropriate, and whether it can fairly be believed that its natural consequences will be in the direction of the betterment of public health and welfare, and therefore that it is one which the state for its protection and advantage may enact and enforce." The classifications made by the act have likewise been upheld, as meeting the actual conditions of modern industrial life. Its limitation to employees of factories and mercantile establishments was reasonable because "We know as a matter of common observation that such labor is generally indoors and imposes that greater burden on health which comes from confinement many times accompanied by crowded conditions and impure air." The exemption of dairies, creameries, and similar plants employing not more than seven workers was also reasonable, because of the perishable nature of the product, the heavier burden of the necessary increase in the force of a small establishment, and

[1] People *v.* Klinck Packing Co., 214 N. Y. 121, 108 N. E. 278 (1915).

because of the closer personal relation between employer and employee and lessened strain in such small establishments. The power given to the commissioner of labor to exempt continuous industries in which daily hours were not more than eight, was held to be an unconstitutional delegation of legislative power, but similar action by the industrial commission under a later amendment authorizing variations in certain cases has not been questioned. A law enacted in Minnesota in 1923 resembled in form the New York statute, but was rendered ineffective by the large number of exceptions provided. This law in 1925 was declared unconstitutional by the State Supreme Court on the ground that classification of industries specified in the act was so arbitrary that it denied equal protection of the law.[1] This decision does not invalidate one-day-rest-in-seven legislation, but shows the necessity of greater care in drafting statutes. Thus the attitude of the courts is apparently favorable to the extension of laws securing industrial workers a weekly day of rest.

(5) *Annual Vacations*

The average salaried worker would consider himself ill-used if he failed to receive an annual paid vacation of two weeks or more. But ordinarily no such provision is made for the wage-earner.[2] In this respect employees of state and federal governments fare better than workers in private employment. A survey by the New York Bureau of Women in Industry,[3] covering representative factories with fifty or more employees in all parts of the state, showed that 91 per cent of the plants gave annual vacations with pay to office workers and 18 per cent to production workers. Length of vacation for office workers was usually two weeks; for production workers, one week. Eligibility was based on length of service, the minimum period in 60 per cent of the plants being one year. The vacation policy was more common in larger than in smaller fac-

[1] State *v.* Pocock, 161 Minn. 376, 201 N. W. 610 (1925).

[2] In May, 1915, the Milk Wagon Drivers' Union of Chicago signed an agreement with their employers which included a provision for two weeks' annual vacation with pay. This is said to be the first such provision in a signed trade agreement.

[3] New York Department of Labor, *Special Bulletin, No. 138*, 1925, p. 5.

tories and followed by a much larger proportion of plants in chemical and food industries than in the textile, wood, leather, stone, clay, and glass industries. About half a dozen states have laws providing annual vacations for several classes of employees. Representative of these is the California statute, which allows an annual vacation of fifteen days with pay to all regular employees of state hospitals, state commissions and boards, and the state printing-office.[1] The federal government likewise provides annual paid leaves of absence for several classes of employees, including the employees of the Bureau of Engraving and Printing, and the Government Printing Office, workers in navy yards, gun factories and arsenals, and railway postal clerks. In Massachusetts in 1914 an act providing a fortnight's paid vacation for laborers employed by cities and towns was submitted to popular vote and accepted by over half of the cities and towns of the commonwealth.[2] Another method sometimes used to secure vacations to city employees is that of inserting such provisions in city charters. For example, the New York City charter gives executive heads at their discretion power to grant employees annual vacations of not less than one week, but *per diem* employees may not be given more than two weeks.

Laws requiring annual vacations have in this country covered only public employments. In Europe, particularly since the war, compulsory annual vacations with pay for both public and private employees have become quite general, and in more than a dozen countries are established by law for larger or similar groups of workers. In Russia, these included all employees; in Poland, Finland, Latvia and Austria, a large proportion; and in Italy, Switzerland, and other countries, certain groups. The length of vacation varies from one to four weeks according to the country, occupation, and length of previous service. A number of laws make vacations longer for persons under eighteen.[3] In 1920 there were in Great Britain fifty-eight trade agreements, covering about two million workers, providing vacations of varying length, and by 1922 the

[1] California, Laws 1909, C. 250, Sec. 1.

[2] In 1919 this vacation provision was extended to all public employees covered by the eight-hour law.

[3] International Labor Office, *International Labour Review*, "Legislation on Annual Holidays for Workers," January, 1925, p. 60.

number of agreements including such provisions had increased to 100.[1]

The foregoing discussion indicates that legal regulation of the working hours and of the rest periods for the different classes of employees in America has tended toward uniform provisions, the same limitations usually being applied to all industries covered by the law. In European countries, on the other hand, in addition to broad maximum and minimum regulations, frequent use is made of the method of determining the length of the work and rest periods in accordance with the special hazards of each industry or occupation. Scientific adjustment of hours of labor requires thorough and often continued investigations of actual conditions, and should combine the practical knowledge of workers and employers with the technical knowledge of experts. In many occupations, dusts and gases, poisons, or extreme temperatures, make it safe to work consecutively for only short periods.[2] The presence in America of hazardous industries fraught with danger to the life and health of thousands of workers employed for long hours and frequently seven days a week, but as yet unregulated either by trade organizations or by state control, indicates the need for a system whereby permanent bodies will be authorized to investigate scientifically such conditions of employment, and fix varying hours of labor on a basis which will adequately protect the health and welfare of the employees and the state. As already noted, some of the leading states of the country have created industrial boards or commissions with authority to make special investigations and to regulate hours in the various industries. This method of meeting the problem, moreover, has been held constitutional by the Supreme Court of Wisconsin on the ground that "The authority thus conferred invests the commission with no arbitrary and uncontrolled discretion, but directs them to ascertain the facts and to apply the rules of law thereto under the prescribed terms

[1] Great Britain, Ministry of Labor, *Labour Gazette,* August, 1920, and December, 1922.

[2] The strike in the oil plants of Bayonne, N. J., for instance, during the summer of 1915, brought to public knowledge the work of the still cleaners who must toil in a temperature of 200° F. cleaning the huge vats in which oil is refined.

and conditions. Such action is not legislative in character, but is the performance of an executive and ministerial duty within the regulations provided for in the act." [1] In these two facts lies some indication of the direction which future progress may be expected to take.[2]

[1] State *v.* Lange Canning Co., 164 Wis. 228, 160 N. W. 57 (1916) quoting State *ex rel.* Buell *v.* Frear, 146 Wis. 305, 131 N. W. 832 (1911).
[2] See chap. IX, "Administration."

CHAPTER VI

UNEMPLOYMENT

The number of unemployed wage-earners in the United States, in September, 1921, was reported by the President's Conference on Unemployment as between 3,500,000 and 5,500,000, with a much greater number of persons dependent upon them.[1] Six years before, in March and April, 1915, a careful canvass of about 400,000 families in fifteen American cities showed 11.5 per cent of the wage-earners unemployed and an additional 16.6 per cent working only part time. On the basis of a similar investigation in New York City earlier in the year it was calculated that the total army of unemployed wage-earners in that city alone at the time numbered about 442,000.[2] The United States Census for 1900 showed that 6,468,964 working people, or nearly 25 per cent of all engaged in gainful occupations, had been unemployed some time during the year. Of these, 3,177,753 lost from one to three months' work each; 736,286 lost from seven to twelve months' each. A student of the problem finds that from 1,000,000 to 6,000,000 workers, exclusive of farm laborers, were idle in the United States at all times between 1902 and 1917.[3] A study published by the Russell Sage Foundation in 1924 states: "To conclude that, averaging good and bad years, from 10 to 20 per cent of all workers are idle all of the time is probably an understatement of the situation."[4]

The employee's loss from this irregularity of work is twofold. Besides his enormous immediate loss in wages and the resulting distress, there is the equally serious loss in the weakening of moral fiber which comes with uncertainty, habits of

[1] *Report of the President's Conference on Unemployment,* 1921, p. 37.
[2] United States Bureau of Labor Statistics, *Bulletin No. 172,* 1915, p. 7.
[3] Hornell Hart, *Fluctuations in Unemployment in Cities of the United States, 1902 to 1917,* Helen S. Trounstine Foundation Studies, Vol. I, No. 2, 1918, pp. 51-52.
[4] Shelby M. Harrison and Associates, *Public Employment Offices,* p. 9.

irregular work, and occasional lapses into destitution. Unemployment is a culture bed for pauperism and all its accompanying evils. As Lescohier has well stated, irregular employment "undermines the physique; deadens the mind; weakens the ambition; destroys the capacity for continuous, sustained endeavor; induces a liking for idleness and self-indulgence; saps self-respect and the sense of responsibility; impairs technical skill; weakens nerve and will power; creates a tendency to blame others for failures; saps courage; prevents thrift and hope of family advancement; destroys a workman's feeling that he is taking good care of his family; sends him to work worried and underfed; plunges him in debt." [1]

Not only are employees thus made less efficient workmen, but in long periods of unemployment their purchasing power is so much decreased that the business depression is thereby prolonged. The National Bureau of Economic Research estimates that the workers of the United States earned nearly $7,000,000,000 less in 1921 than in 1920; in other words, that there was a decrease of one-fourth in the total income of wage-earners.[2] A study by a group of business men and economists states, concerning the depression of 1921-1922: "Making due allowance for the facts that lower prices increased the purchasing power of each dollar, and that wage-earners consumed much of their savings and bought a large amount of goods on credit, unemployment itself cut down wage-earners' purchases by billions of dollars and became a cause of continued business depression." [3] Overhead costs continue when establishments are idle, and some equipment, notably that of mines, deteriorates more rapidly when not in use.[4] In addition there is direct financial loss due to increase of labor turnover. A machine-tool builder to whom the matter had been suggested declared after a careful study of his plant that the hiring of 1,000 new persons in one year, while the perma-

[1] Don D. Lescohier, *The Labor Market*, 1919, p. 107.
[2] W. I. King, *Employment, Hours and Earnings in Prosperity and Depression*, 1923, pp. 108 and 144.
[3] S. A. Lewisohn, E. G. Draper, John R. Commons, Don D. Lescohier, *Can Business Prevent Unemployment*, 1925, p. 100.
[4] H. Feldman, *The Regularization of Employment*, 1925, chap. 11, sec. 11.

nent additions to his force were fewer than 50, had reduced his profits by at least $150,000, or about $150 for each new worker.[1] Some place even a higher estimate upon the cost of hiring and "breaking in" a new employee.[2]

Even this general statement of the wastes of unemployment indicates the imperative need of preventive measures. Hence we are asking with increasing insistence, is unemployment a necessary evil? If not, to what extent is legislation a solution?

In Chapter I it was suggested that unemployment may be defined as the failure to make a labor contract. This failure may be traced to one of three causes: (1) Cessation of work arising from trade disputes; (2) unemployability, or disability, owing to sickness, old age, or other personal conditions; and (3) inability of men who are willing and able to work to find employment.

The present discussion relates only to the third part of the whole problem of idleness. Legislation intended to minimize idleness due to labor disputes is discussed in Chapter III. The problems of unemployability and unemployment are by no means identical, but are related to the extent that much chronic unwillingness to work has resulted from the demoralizing influence of unemployment, and therefore a reduction of unemployment may decrease the additions to the ranks of the unemployable. Introduction of machinery and increasing speed of industry are constantly lowering the age limit and raising the standard of efficiency which divides the so-called unemployable from the unemployed and thus adding to the number of people who are involuntarily idle. How to provide satisfactory means of caring for the shiftless and the criminal is primarily a problem of charity and correction, but the prevention of unemployment is a problem of industrial organization. In this chapter the purpose is to describe the more direct legislative remedies for unemployment due to the inability of normal workers to obtain positions. These rem-

[1] Magnus W. Alexander, "Hiring and Firing: The Economic Waste and How to Avoid It," *American Industries*, August, 1915, p. 19.

[2] P. Sargent Florence, *Economics of Fatigue and Unrest*, 1924, chap. VI.

edies may deal either with: (1) The regulation of private employment offices; (2) the establishment and operation of public employment offices; (3) systematic distribution of public work; or (4) the regularization of industry. A fifth important legislative remedy, unemployment insurance, will be discussed in the chapter on "Social Insurance."

A study of the comparative possibilities of the various proposed or attempted remedies for unemployment would be much facilitated by statistics indicating the total amount of involuntary idleness and what proportion is due to each one of the several factors, such as cyclical and seasonal fluctuations, unnecessarily frequent changes in the personnel of the working force, and other preventable irregularity in employment, and, lastly, to the lack of a centralized market for labor. But accurate and comprehensive figures of this nature are not available in the United States. The existence of unemployment to a significant degree is undoubted, but unfortunately it is impossible at the present time to make more than a rough guess as to the relative proportion of unemployment due to each of the several causes mentioned.

In New York and Massachusetts, however, the state labor departments have for certain periods collected fairly reliable statistics in regard to unemployment among organized workers. The mean percentage of idleness in New York among the members of "representative unions"[1] at the end of each month from 1904 to June, 1915, due to causes other than labor disputes or disability, ranged from 3.2 to 38.4 per cent.[2] In all but the year 1906 the percentage was over 12. In the same period the unemployment resulting from other causes was comparatively small, ranging from less than one-twentieth of 1 per cent to 6.4 per cent for labor disputes and from 0.8 to 1.8 per cent for disability. The labor department states that, aside from industrial maladjustments, "other contributing causes for idleness, such as labor disputes, sickness, and ac-

[1] In 1915 these representative trade unions numbered 232 and included approximately 25 per cent of the total trade-union membership of the state. The collection of the figures was discontinued in 1917, and they have not been published in the above form since June, 1915.

[2] New York Department of Labor, *Bulletin No. 73*, 1915, "Idleness of Organized Wage-earners in the First Half of 1915," p. 2.

cidents, are inconsequential."[1] Of the 11.3 per cent average of unemployed union members in Massachusetts from 1908 to 1922 all but 3.6 per cent were unemployed because of lack of work or of raw material.[2] From an analysis of all available data, the United States Department of Labor concludes that industrial wage-earners lose about 1 per cent of their working time from labor disputes, 2.5 per cent from sickness and other disabilities, 10 per cent from regular unemployment due to lack of work, and another 10 per cent through partial unemployment due to part-time operation of plants, shut-downs, time lost on account of waiting and related causes.[3]

The tremendous productivity developed during and since the war[4] has increased irregularity of employment. United States Secretary of Labor James J. Davis, in his annual report for 1925, states: "One of the great elements of the problem of unemployment . . . is the overdeveloped state of some of our large industries. Our productive machinery and equipment in many of these industries cannot run for 300 days in the year without producing a stock that cannot be sold in this country nor in any or all other countries." Basing his computation upon figures from the United States Census, he shows that in 1920 14.5 per cent of the total number of boot and shoe factories in the United States employed 60 per cent of all workers in the industry, manufactured 65.6 per cent of all boots and shoes produced, and could, with steady work for 300 days a year, produce all that could be sold. Similarly, 12.8 per cent of the flour mills, employing 42 per cent of the workers could with full-time work produce practically all that the market demands. He concludes: "Go down the line and in nearly every industry you will find the same appalling condition of affairs."[5] It should also be noted that there is a wide seasonal variation in the demand for labor. Statistics collected in New York as to idleness of the members of labor or-

[1] New York Industrial Commission, *Special Bulletin No. 85,* 1917, "Course of Employment in New York State from 1904 to 1916," p. 43.
[2] Massachusetts Department of Labor and Industries, *Annual Report of Statistics of Labor for 1923,* Pt. III, pp. 19-20. The collection of comparable data was discontinued in 1923.
[3] United States Bureau of Labor Statistics, *Bulletin No. 310,* 1922 p. 2.
[4] See p. 231.
[5] Secretary of Labor, *Annual Report,* 1925, pp. 103-105.

ganizations indicate that the mean percentage of idleness during the period 1897 to 1913 was, in all but three years, over 5 per cent at the end of September, and over 15 per cent—that is, three times as large—at the end of March. The federal Census of Manufactures for 1905 showed from the manufacturers' records that in one month 7,017,138 wage-earners were employed, while in another month there were only 4,599,091, leaving a difference of 2,418,047. That is to say, nearly 2,500,000 fewer workers were employed at one period of the year than at another, while for the years 1909, 1914, 1919, and 1923 the average difference between numbers employed in maximum and minimum months was over 686,000.

In addition to the irregularity of employment due to cyclical fluctuations in the demand for labor, or industrial "crises," and that due to seasonal variations, a third important type of idleness results from the casual or short-time nature of many occupations. The New York commission, which studied unemployment, reported in 1911 that two out of every five wage-earners are obliged to seek new places one or more times every year.[1] In June, 1924, one-third of all factory workers in the state were on part time.[2] In brief, the best available evidence indicates that unemployment is chronic and the amount never insignificant, even when industrial conditions are at their best.

1. Regulation of Private Employment Offices

To the extent that there is somewhere a suitable "manless job" for each "jobless man," the solution of unemployment is simply the proper distribution of the labor supply. Perhaps the commonest method of seeking to bring about this distribution is by unsystematic individual search. A man not recommended for a position by a relative or friend often follows the easiest course, that which involves the least immediate expenditure of money and thought. He starts from home and drops in at every sign of "Help wanted."

"Help wanted," scrawled on a piece of cardboard, is the

[1] New York Commission on Employers' Liability and Other Matters, *Third Report: Unemployment and Lack of Farm Labor*, 1911, p. 38.

[2] New York Department of Labor, *Industrial Bulletin*, December, 1924, p. 14.

symbol of inefficiency in the organization of the labor market. The haphazard practice of tramping the streets in search of work is no method at all. It assures success neither to the idle worker in his search for work, nor to the employer in his search for labor. On the contrary, by its very lack of system, it needlessly swells the tide of unemployment, and through the foot-weary, discouraging tramping which it necessitates often leads to vagrancy and to crime.

Another common method of connecting employer and employee is through the medium of advertising. Every large newspaper in the country carries yearly hundreds of columns of "Help wanted" and "Situations wanted," at a cost to employers and employees estimated at about $5 for every worker. If the money spent brought commensurate results, there would be less ground for complaint. At present an employer advertises for help in several papers because not all the workers read the same paper. The employee lists the positions advertised and then starts on the day's tramp. At one gate fifty or a hundred men may be waiting for a single job, while in other places a hundred employers may be waiting each for a single employee. Unnecessary duplication of work and expense by both parties is evident. In addition to the expense, newspaper advertising also possesses inherent possibilities of fraud. It is difficult for the newspaper, even if it always tries, to detect misrepresentations, and the victimized employee very rarely seeks legal redress.

In recognition of the need of more systematic means of connecting the man with the job, private employment offices of various sorts have long been established. Private bureaus which charge no fees are conducted by various philanthropic and semiphilanthropic agencies in all cities of importance, but their activities consist largely in finding casual employment for near unemployables. In addition, many trade unions and employers' associations maintain employment bureaus for workers in special occupations. Some of them are very efficiently organized and conducted. Notable examples are the printers' union "day rooms," and the chain of employment bureaus conducted by the National Metal Trades Association in fourteen principal cities of the United States. The latter offices charge no fees, their registrations number into the hun-

dreds of thousands, and it is claimed by the employers that they are not strike-breaking or blacklisting institutions.[1] Nevertheless, the usefulness of employment bureaus under the partisan control of either trade unions or employers is limited by their potential or actual use as weapons in a trade dispute. They lack the neutrality essential to the satisfactory organization of the labor market.

(1) *Abuses of Private Agencies*

Private employment agents, doing business for profit, have sprung up in all large centers. In 1912 there were 249 of them licensed and in operation in Chicago; in New York they number about 600; and in all the states, probably about 5,000. In 1919 the United States Employment Service received reports concerning 1,847 fee-charging bureaus in the United States and estimated that the total number of large agencies was 2,500. Of those reported, 1,000 were in New York, 309 in Illinois, 281 in Pennsylvania, and 190 in Massachusetts; that is, 96 per cent of all were in these four states.[2] Aside from a few specialized agencies, they handle chiefly unskilled, domestic, and theatrical labor. The best organized and most powerful are said to be those which supply the railroads with common labor.

Many abuses are charged against the commercial agencies, particularly misrepresentation of wages and conditions of work, exaction of extortionate fees, sending applicants to immoral resorts, and "splitting fees" with foremen and thus inducing frequent discharges in order to get fees from men employed to fill the vacancies. In the testimony in the hearing on the petition for an injunction against the Washington referendum practically abolishing commercial agencies, it was

[1] A. J. Allen, secretary of the Associated Employers of Indianapolis, in address before the American Association of Public Employment Offices, 1914. A study of employment agencies recently published by the Russell Sage Foundation states: "The bureaus of this organization usually had as their aim the complete centralization of information about all the workers in their trade as a guard against the employment of men known to be 'union agitators.'" Shelby M. Harrison and Associates, *Public Employment Offices*, 1924, p. 70.

[2] Shelby M. Harrison and Associates, *Public Employment Offices*, 1924, p. 96.

stated that some of the private offices were so conducted as to "have three men for one job; one upon the job, one going to the job, and one coming from the job, and receiving compensation from all." There are frequent instances, also, where the commercial agencies accept fees and send the workmen to distant points where there is no demand for laborers. For example, in Kansas, the director of employment bureaus states that during the harvest rush it became known that "private employment agents were imposing upon men who came to the state in search of work in the harvest fields, exacting a fee from men seeking employment and then directing them to parties who had not authorized the employment agent to engage hands."[1] In the year ending May 1, 1913, the commissioner of licenses of the city of New York reported the investigation of 1,932 complaints against registered employment agents, resulting in nine convictions, the refunding of more than $3,000 to victimized applicants, and the revocation of thirteen licenses.[2] Among the charges for which licenses were revoked were fraudulent conduct, misrepresentation, failure to refund fees, and sending girls to questionable places.

(2) *Restrictive Legislation*

In the majority of states the abuses of the profit-making agencies have brought about restrictive legislation designed to prevent fraud and extortion and to insure moral surroundings. Under this legislation no one may carry on an employment office for profit without depositing a bond with the state department of labor or the city authorities and securing a license. The amount of the bond varies from $100 to $5,000, and the annual license fee from $10 to $250, often both being graded according to the size of the city or the sort of labor handled. In some of the Southern states the license fee for agents hiring labor to transport from the state is much higher. In Virginia it is $5,000 for each county or city in which the agent operates.[3] Such fees are prohibitive, designed to ob-

[1] *Twenty-ninth Annual Report of the Kansas Department of Labor and Industry*, 1913, p. 220.
[2] *Report of the Commissioner of Licenses*, New York City, 1913, p. 19.
[3] Virginia, Laws 1924, C. 452.

struct migration of negro labor. It was reported to the United States Employment Service in 1919 that in the Southern states East of the Mississippi River there were only thirty-nine private agencies, and in two of these states there were none. Licenses are issued only if the premises are found proper, and may, together with the bond, be forfeited for violation of the law. About a dozen states prohibit the location of agencies in saloons. Association with lodging-houses or restaurants is also frequently prohibited, and Colorado extends the prohibition to gambling places. In several states the sending of minors or women to immoral resorts is forbidden. In many jurisdictions the law fixes a maximum charge, usually either a certain percentage of the first month's wages or a fixed amount. Other related provisions are requirements as to form of receipt, and provisions for return of all or part of the fee if work is not soon obtained or if a workman is discharged in a short time. In California and the District of Columbia traveling expenses as well as the fee must be returned. Frequently, it is specified that all advertisements or other information shall be truthful.[1] In a number of states a record of all applicants registered is required, but rarely are the requirements comprehensive enough to give information valuable for statistical purposes. Among the notable exceptions is New York, where to assist in the publication of a labor market bulletin by the department of labor, private employment agents must keep their records "in such form as may be required by the commissioner of labor in order to supply the same information as that supplied by state offices." The province of Ontario, Canada, has an excellent regulatory law, providing for annual licenses.[2] The lieutenant-governor is authorized to fix fees and make rules for the conduct of the business, and the superintendent who issues the licenses is given broad discretionary power in granting and revoking them. The rules limit the fee which may be taken from an applicant or from an employer for any one employee to $1. An agency may not take any fee from a would-be employee or engage a person for an employer unless it has in hand a written and dated

[1] Wisconsin (Laws 1915, C. 457) specifies in addition that advertisements of private bureaus must state the existence of a strike or lockout.
[2] Ontario, Laws 1917, C. 37.

order from the employer covering the position in question. Like the best of the American laws, it failed to bring under any control agencies doing an interstate business. Some of the worst abuses have occurred among employment offices of this type. Interstate control was later supplied by federal action, however.[1] The coordination of dominion and provincial regulation and the efficient operation of the public employment system greatly improved the character of the fee-charging agencies and reduced their number from 98 in 1914 to 14 in 1924. The number of placements by these agencies for the year 1923-1924 was 35,391 as compared with 149,298 by public offices.[2]

The validity of state regulation of private employment agencies has seldom been denied by the courts. A California statute limiting the amount of charges was declared an unconstitutional infringement on the right to contract,[3] but similar provisions in other states have, as far as is known, been uniformly upheld. The requirement of a license has been sustained, even when the license fee was placed so high as to be practically prohibitive. Thus a Georgia law, fixing a fee of $500 for each county in which the agent operated, was upheld by the supreme courts both of the state[4] and of the United States,[5] the latter decision being followed in other Southern jurisdictions.[6] The prevailing view is that license regulations have for their object the promotion of public health, safety, morals, and convenience, that they tend to prevent fraud and extortion, and hence that they are within the police power of the legislatures even though they may somewhat restrict the right to carry on a lawful business without legislative interference.[7]

[1] See p. 331.

[2] Department of Labor, Toronto, *Annual Reports,* 1921, p. 39, and 1924, pp. 8 and 25.

[3] *Ex parte* Dickey, 144 Cal. 243, 77 Pac. 924 (1914). The statute invalidated was California, Laws 1903, C. 11.

[4] Williams *v.* Fears, 110 Ga. 584, 35 S. E. 699 (1900).

[5] Williams *v.* Fears, 179 U. S. 270, 21 Sup. Ct. 128 (1900).

[6] State *v.* Napier, 63 S. C. 60, 41 S. E. 13 (1902); State *v.* Roberson, 136 N. C. 587, 48 S. E. 595 (1904).

[7] People *ex rel.* Armstrong *v.* Warden of the City Prison of N. Y., 183 N. Y. 223, 76 N. E. 11 (1905); Price *v.* People, 193 Ill. 114, 61 N. E. 844 (1901).

The almost unanimous testimony of investigators and public officials, however, is that these provisions have not been successful in stamping out the abuses of private offices, and the result has been a widespread movement for the abolition of such offices altogether. Complete suppression of private employment bureaus was recommended by the Trades and Labour Congress of Canada at its annual meeting in 1913,[1] and a resolution of similar tenor was adopted at the 1914 convention of the American Association of Public Employment Offices. The Employment Service Council of Canada, which is an advisory body composed of representatives of the dominion and provincial governments, and of various organizations, in 1920 and again in 1923, adopted a resolution stating its opinion that full benefits could not be derived from the government system of employment bureaus while private agencies continued, and advising their elimination.[2] By 1926 five of the Canadian provinces, Alberta, British Columbia, Manitoba, Nova Scotia, and Saskatchewan, had enacted legislation prohibiting the operation of such agencies,[3] and Ontario and Quebec had provided by agreement with the dominion government under the employment office's coordination act[4] that no new licenses should be issued. The province of Quebec also seeks to restrict the number of private employment offices by charging a fee of $200 where there is a public office, otherwise only $25. The popular protest against the abuses of private commercial agencies was voiced by the adoption in the state of Washington of an initiative measure prohibiting the collection of fees from workers by an employment agent. The reason assigned in the measure is that "The system of collecting fees from the workers for furnishing them with employment . . . results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state."[5] This measure was expressly based on the police power, and the United States District Court upheld the prohibition inasmuch as "The state, under its police power, can

[1] *Dominion of Canada Labour Gazette,* Vol. XIV, p. 448.
[2] United States Bureau of Labor Statistics, *Bulletin No. 355,* 1924, p. 6.
[3] Canada, Ministry of Labor, *Labour Gazette,* April, 1926, p. 334.
[4] See p. 331.
[5] Initiative Measure No. 8, adopted November 3, 1914.

adopt any act which reasonably protects its citizens, or a class of citizens, from fraud and extortion."[1] But in 1917 the United States Supreme Court in a five-to-four decision held the law unconstitutional as "arbitrary and oppressive," and an undue restriction on the liberty of the appellants, and therefore a violation of the fourteenth amendment.[2] The minority opinion emphasized facts regarding the actual abuses of the private agencies rather than abstract principles of law. Two years later the first official International Labor Conference established under the League of Nations recommended the government supervision and gradual abolition of all fee-charging employment agencies. In 1920 the Conference included in its Convention concerning the work of seamen, a clause providing for abolition of fee-charging agencies in that field.[3]

In 1919 the Wisconsin legislature attempted to deal with the problem from a new angle, by giving the state industrial commission discretionary power to regulate fees and to refuse licenses to private employment agencies if the public bureau in the community is sufficient to supply needs.[4] This amended the statute of 1913 which had given the commission such discretionary powers of refusal if in its judgment existing licensed agencies were sufficient for the needs of the community. Official reports show that the number of fee-charging agencies decreased from thirty-eight in 1913-1914 to twenty-six in 1918, to sixteen, of which nine served common labor, in 1919-1920, and to nine, of which three served common labor, in 1925-1926.[5] In the year 1925, the number of persons placed, exclusive of clerical and professional workers, was 104,099 by public and 3,215 by private employment bureaus.

In a number of other countries also, dissatisfaction with the private commercial agencies has led to more or less complete

[1] Wiseman *v.* Tanner, 221 Fed. 694 (1914).

[2] Adams *v.* Tanner, 244 U. S. 590, 37 Sup. Ct. 662 (1917).

[3] International Labor Office, *Official Bulletin*, Vol. I, pp. 419 and 556. By 1926 the Seamen's Convention had been ratified by a dozen countries, including Germany, Italy, Norway, Sweden, and Japan and the Recommendation of 1919 was being carried out by nearly all European countries. See latest report of International Labor Office on progress of ratifications.

[4] Wisconsin, Laws 1919, C. 178.

[5] Industrial Comission of Wisconsin, *Biennial Report, 1918-1920*, p. 42, and *Wisconsin Labor Market*, January, 1926, p. 16.

steps for their repression. A German act of 1910 states that licenses must be refused to private employment agencies when there is no absolute need for them, and further declares that the need does not exist when a public exchange is worked normally in the locality.[1] Under the German law of 1922, establishing a national system of public employment exchanges, fee-charging agencies are to be supervised by the state offices and forbidden after January, 1931. Licenses in Austria are conditioned on the absence of a public employment office in the vicinity, and in practice no new licenses have been granted since the war. A French law of 1904 authorizes the establishment of public offices by the communes and at the same time authorizes the closing of the private registry (commercial) offices upon payment of damages.[2] Though the public employment system was much strengthened during and since the war, fee-charging agencies still exist.[3] By 1926 such agencies had been abolished in Finland, Roumania, and Bulgaria. Norway and Denmark had to a large extent done away with them.[4]

2. Public Employment Exchanges

The agitation for public employment offices has been due partly to the search for a remedy for the abuses of private agencies and partly to a deepening conviction that it is a proper function of the state to help the unemployed find work. The first American state to make provision for employment offices was Ohio in 1890, followed by Montana in 1895, and New York in 1896.[5] The majority of the present laws have been enacted since 1900.

(1) *State and Municipal Offices*

There were in existence in the country, prior to the general readjustment forced by America's entrance into the World

[1] Report of the Union of German Employment Offices, International Conference on Unemployment, 1910, *Report No. 3*, p. 31.

[2] Law of March 14, 1904, Art. 11. See *Bulletin of the International Labor Office*, 1904, French edition, p. 48.

[3] See p. 337.

[4] International Labor Office, *Remedies for Unemployment*, 1922, pp. 65-68.

[5] The original Montana and New York laws were soon repealed.

War, between eighty and ninety state and municipal employment exchanges, maintained by some twenty-three states [1] and by more than a dozen cities.[2] By 1926 the number of public offices had increased to over 200 operated in more than 185 cities of 40 states. Appropriations for their maintenance had grown from less than $300,000 in 1913 to over $1,500,000 in 1920.[3] Municipal exchanges, as such, have now mostly disappeared except in a few cities, but in recent years several states have enacted legislation encouraging cooperative maintenance of offices by municipalities and states and the growth of this type of office has been considerable.[4]

Some few states create a state employment office, but make no provision for local branches. Since the work of such an office must be conducted almost entirely by the slow and unsatisfactory "mail order" method, this type of law has not yielded very important results. The West Virginia bureau at Wheeling placed about 2,000 applicants each year [5] in the eleven years following its establishment, but the office conducted in Baltimore, Md., under the law of 1902 has had

[1] By 1926 provision for state employment exchanges had been made in Arizona, 1917; Arkansas, 1917; California, 1915; Colorado, 1907; Connecticut, 1905; Georgia, 1917; Illinois, 1899; Indiana, 1909; Iowa, 1915; Kansas, 1901; Kentucky, 1906; Louisiana, 1921; Maryland, 1902 and 1914; Massachusetts, 1906; Michigan, 1905; Minnesota, 1905; Missouri, 1899; Nebraska, 1897; Nevada, 1923; New Hampshire, 1917; New Jersey, 1915; New York, 1914; North Carolina, 1921; North Dakota, 1921; Ohio, 1890; Oklahoma, 1908; Pennsylvania, 1915; Rhode Island, 1908; South Dakota, 1913; Utah, 1917; West Virginia, 1901; and Wisconsin, 1901.

[2] In 1915 public employment exchanges maintained by municipalities were to be found in Phœnix, Ariz.; Los Angeles, Sacramento, and San Francisco, Cal.; Kansas City, Mo.; Butte, Great Falls, and Missoula, Mont.; Newark, N. J.; New York, N. Y.; Portland, Ore.; Pittsburgh, Pa.; Richmond, Va.; Aberdeen, Everett, Hoquiam, Seattle, Spokane, and Tacoma, Wash.; and perhaps in a few additional cities. The three states of Montana, Louisiana, and Idaho respectively authorized, encouraged, and required cities to set up such agencies, but provided for no central administrative control. In 1921 Louisiana enacted legislation authorizing state offices. By 1923 about the only cities maintaining municipal exchanges were Seattle, Sacramento, Louisville, Richmond, and Chicago.

[3] Shelby M. Harrison and Associates, *Public Employment Offices*, 1924, p. 624.

[4] *Ibid.*, pp. 114 and 121.

[5] United States Bureau of Labor Statistics, *Bulletin No. 109*, 1912, "Statistics of Unemployment and the Work of Employment Offices," p. 137.

only a nominal activity,[1] and the Nebraska law establishing a public employment office in the bureau of labor has, because of lack of funds, been practically a dead letter.[2] So ineffective was the Maryland office that in 1914 a special department was created in the local immigration bureau, for the purpose of securing "efficient farm help to meet the demands for such labor in the agricultural communities of the state."

The remaining states which have legislated upon this subject authorize the establishment of local offices, usually under control of the bureau of labor. This is the most important type of public employment bureau law in this country, and is well exemplified by the New York statute of 1914.[3]

By this statute a bureau of employment is established in the state department of labor, under the immediate charge of a director, who must be under civil service and who must have "recognized executive and managerial ability, technical and scientific knowledge upon the subject of unemployment and administration of public employment offices, and recognized capacity to direct investigations of unemployment and public and private agencies for remedying the same."[4] The industrial commission may establish such local offices as it deems necessary, each to be in charge of a superintendent under the general supervision of the director. These local offices are to register applications from those seeking employment or employers seeking workers, and make periodic reports to the director. Any office may be subdivided into separate departments for men, women, and juveniles, or other class of workmen, as farm laborers. The service is to be free and penalties are prescribed for the acceptance of fees by the officials. A coordination of the activities of the local bureaus is to be facilitated by a labor market bulletin and the interchange and publication of lists of vacancies. Partial recognition is given to the common European policy of joint control

[1] *Ibid.*, pp. 127-129.
[2] *Ibid.*, p. 131.
[3] New York, Laws 1914, C. 181.
[4] The desire of the framers of the New York law to assure the selection of specially trained men for the work of managing the state employment bureau resulted in the appointment of a director who had many years of experience as an investigator of the organization and methods of employment bureaus.

by directing the commissioner of labor to appoint for each office a representative committee composed of employers and employees, with a chairman agreed upon by the majority. On the request of a majority of either side, the voting on any question must be so conducted that there shall be an equality of voting power between employers and employees, notwithstanding the absence of any member. Similar committees under the Wisconsin Industrial Commission have been for years an indispensable adjunct to the public exchange at Milwaukee, and are provided for in the 1915 laws of Illinois [1] and Pennsylvania.[2] They were also recommended by the first official International Labor Conference in 1919.

One of the most comprehensive state organizations of public employment offices was that effected by Ohio to meet the state's war-time employment problem. At the outbreak of the war, seven relatively efficient city-state offices were in operation in large industrial centers. In June, 1917, their management was turned over to the state council of defense, which divided the state into twenty-one districts, each containing several counties, and established fourteen additional offices, so that there was one in the principal city of each district. Certain expenses of each new office were paid by the city and the state. The staff of the old offices was also increased to provide outside men to solicit orders for farm and industrial help and to enable the offices to be kept open Saturday afternoons and until nine o'clock in the evening. A central clearing house was organized at the state capitol. Particular attention was paid to supplying farm labor. Each office made a monthly canvass of the labor needs of the farmers in its district, and both the local and the central offices carried on publicity campaigns to show the advantages of farm work. Demands for help which could not be met locally were referred to the central clearing house.

Perhaps the most controversial point in the administration of a bureau is the policy to be pursued in time of strike or lockout. The first Illinois law establishing state exchanges in 1899 [3] was four years later declared unconstitutional because

[1] Illinois, Laws 1915, p. 414.
[2] Pennsylvania, Laws 1915, No. 373.
[3] Illinois, Laws, 1899, p. 268.

of the provision that applications to fill places vacant because of a strike were not to be received.[1] The court held that this provision deprived citizens of the equal protection of the laws guaranteed by the fourteenth amendment, inasmuch as it discriminated between employers whose men were on strike and other employers, and also between workmen who wished to take places vacant because of a strike, and workmen who did not. Wisconsin had a similar experience. The healthy instinct of which this prohibitory clause was an unskilful manifestation has been satisfied in most American exchanges by publicity. Under the New York law, for instance, either party to a trade dispute may file a statement, which, with any answer, must be exhibited at the exchange. The prospective employee is informed of the statements at the same time that he is informed of the position, and it is left for him to decide whether or not to take the work. In Massachusetts it is even the practice in case of an industrial dispute to stamp the introduction card which the employee is to present to the employer with the words, "There is a strike on at this establishment." Under the publicity policy very few applicants take strike-breaking jobs. Employers and labor union representatives are thoroughly satisfied, and consequently the exchange escapes the rocks of disaster on either side. As an important corollary to this method of handling a strike situation, the New York law includes the further stipulation that no applicant is to suffer any disqualification or prejudice at an exchange if he refuses to accept an offered job on the ground that a strike or lockout exists or because the wages offered are lower than those current in the district for the same work.

Careful registration of all applicants is provided for, and the industrial commission may also specify the form of registers for private agencies which must furnish information on request. Five per cent of the annual appropriation for the bureau may be spent in advertising.

A special feature of the law is the provision for assistance to juveniles somewhat similar to the English system. Children of working age may register at the schools, and a subcommittee composed of employers, workmen, and persons familiar with education or other conditions affecting juveniles

[1] Matthews *v.* People, 202 Ill. 389, 67 N. E. 28 (1903).

must be appointed by the advisory committee to advise in regard to the management of the juvenile department of the employment offices and otherwise to assist parents and children with respect to the choice of employment. No other American law contains an exactly similar provision, though in a few offices energetic superintendents are endeavoring to develop this side of their work, and in the Pennsylvania act of 1915 special arrangements are made for cooperation with school placement bureaus and with the school authorities generally.

Often, as has been recognized in the British and German systems, lack of railroad fare to reach an offered position is a serious obstacle to a willing but moneyless worker, yet no American state authorizes its employment bureau officials to advance the needed transportation. A few superintendents do, however, advance fares in exceptional cases, and the Wisconsin exchanges frequently turn over to applicants the transportation advanced by the prospective employer, checking the man's baggage to the employer as a safeguard. During the war, the Minnesota Commission of Public Safety set aside $1,000 to be used as a revolving fund for advancing fares to men placed by the state employment office. Considerable care was exercised in selecting the men to receive these advances. In each of two years' experience the losses from the fund were less than 5 per cent, and arose ordinarily from the farmers to whom men were sent securing other help and then refusing to reimburse the employment office.

Of the exchanges initiated by municipalities under their own charters, the Seattle office established in 1894 has been among the most successful, filling 3,342 positions in 1913. An important part of the activity of this office has been the shipment of unskilled workers to hop fields and lumber camps in large groups, which has helped to keep the per capita cost of filling positions down to the phenomenally low figure of 4 cents. In 1917, 73,593 positions were filled at a per capita cost of 10 cents, and in 1919, 55,305 positions at a per capita cost of 19 cents.[1]

[1] *Annual Reports of Public Employment Office, Seattle,* 1913, 1917, and 1919.

During the winter of 1914-1915 several public employment bureaus and labor department officials in the grain-raising states organized, in cooperation with the United States Departments of Labor and of Agriculture, the National Farm Labor Exchange for the efficient placing of harvest hands. Since harvesting begins two months earlier in the Southern than in the Northern part of the country, and furnishes at most only a few weeks' work in any one place, it was felt necessary to develop some means for more carefully directing the large numbers of workers who "follow the crops," and for preventing hardship to them by loss of time and by congestion in districts already flooded with workers. The exchange had no administrative powers and represented simply a means of exchanging information and effecting personal contact between the offices in the several states. It did not constitute an organization of the Middle West market for harvest labor. But it was a short step in the right direction.[1] This organization met in annual convention for a number of years during the war and again in 1920, following the collapse of the federal employment service.

Notwithstanding the good work of a few, however, the state and municipal bureaus are still far from furnishing an adequate medium for the exchange of information on opportunities for employment. Only about half the states are represented. Due to lack of civil-service requirements, many of the managers are political place-holders of worse than mediocre attainments. Some of the offices exist, as has been seen, only on paper, others are poorly located, in out-of-the-way places, and inadequately heated, lighted, and ventilated. Many have therefore driven away the better class of workers, and deal only with casuals. Appropriations are usually too small for efficiency. A uniform method of record-keeping has yet to be adopted. Statistics are non-comparable, and frequently unreliable, if not wholly valueless.[2] There is practically no interchange of information between various offices in a state or between states. In short, workmen are still undergoing want,

[1] Don D. Lescohier, *The Labor Market*, 1919, p. 173.

[2] For a full discussion of these statistics, see "Operation of Public Employment Exchanges in the United States," *American Labor Legislation Review*, May, 1914, pp. 359-371.

hardship, and discouragement even though often within easy reach of the work which would support them, if they but knew where to find it.

Nor does the evil end there. Everyone who has studied the problem realizes that method and system in putting men and opportunities for work in touch with each other will not of themselves prevent oversupply of labor or of jobs. They will do so no more than the cotton exchange guards against an over- or an undersupply of cotton. They will serve merely as levelers in the scales of labor supply and labor demand. Besides the unemployment which is due to the failure of men and jobs to find each other, there is much due to other causes which even the best system of employment exchanges would not directly eliminate.

But close students agree that these other causes of unemployment cannot be successfully attacked without a basis in comprehensive, conscientiously collected information such as cannot be furnished by our present machinery for dealing with the problem. Under present methods there exists no automatic, cumulative means for collecting the facts. This results, of course, in exaggerated statements in both directions. Our paucity of information on this complex and vital question has continued, even though labor problems in one form or another have taken the lead as subjects for legislation. Any scientific lawmaking on the programs of social insurance—especially unemployment insurance—and of vocational guidance must be grounded on facts of relative employment and unemployment of the workers, by trades, by sexes, and by ages. Without a nationwide system of labor exchanges, no basis can exist for anticipating in an accurate manner the ebbs and flows of the demand for labor. Without concentration of the information now collected and now held separately in thousands of separate organizations throughout the land, the possibility of looking into the future, or of profiting by the past, is out of the question. A further step is the coordination of the various national systems through the International Labor Office set up under the League of Nations, as recommended by the first official International Labor Conference in 1919.[1]

[1] International Labor Office, *Official Bulletin*, Vol. I, pp. 417-419. The Convention on unemployment which provided for establishment of

(2) *Federal Activity*

Growing realization of the foregoing facts, which were emphasized by the war-time scramble for labor, led to the development of the United States Employment Service. The service has had a checkered career. It began as a means for the placement of immigrants on farms, inaugurated by the federal Bureau of Immigration in 1907. In January, 1915, the service was extended to cover all occupations and all classes of workers. By January, 1918, it operated over ninety offices in various parts of the country. It made efforts to cooperate with state public bureaus in New Jersey, Illinois, and elsewhere, and set up a special division of "reserves" intended to provide for war needs. About 30,000 skilled workers were enrolled in the "Public Service Reserves," who agreed to enter war jobs when requested by the government, and about 150,000 boys between sixteen and twenty-one enlisted in the "Boys' Working Reserve" for farm or other war work during their summer vacation. The service was handicapped, however, by small appropriations, by its subordinate position in another bureau, and by the fact that many of its employees were immigration officials, whose main line of work was not labor placement.

On January 3, 1918, a first step toward the creation of a worthy national system was taken when the Secretary of Labor announced the separation of the Employment Service from the Bureau of Immigration. Besides the Division of Reserves, the service then consisted of the Division of Investigation, the Women's Division, the Division of Farm Labor, and the Division of Information, Administration, and Clearance. Complaints were already heard of a shortage of labor in Eastern war plants, and the possibility of labor conscription was discussed. In the absence of adequate national organization there was little authentic information as to the real state of the labor market. The director of the employment service stated

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national systems of public employment offices and international cooperation in preventing and relieving unemployment, by January, 1926, had been ratified by a score of countries, including France, Germany, Great Britain, Italy, Japan, Scandinavia, and South Africa. See *Industrial and Labor Information,* latest chart on progress of ratifications.

his belief, however, that "a national labor shortage was a myth. The apparent general shortage in certain states is due to faulty distribution."

In the reorganization of the Department of Labor into the main national agency for war labor administration, which soon took place, the Employment Service was recognized as one of the eight new divisions established. It was granted $2,000,000 from the President's emergency fund and began developing cooperation with all state and municipal systems and opening new offices at the rate of almost 100 a month.

By October 21, 1918, 832 offices had been opened, covering every state, the District of Columbia, and Porto Rico. There were sixty-four offices in Illinois, sixty-nine in New York, and seventy-four in Pennsylvania. A number of the offices were for men or women workers exclusively, and several were devoted to placing railroad or farm labor. One Chicago office supplied demands for engineers and teachers. In June, 1918, the Employment Service took control of the hiring of dock labor. A scheme for regulating the hiring of longshoremen, first worked out in New York City, replaced the former chaotic conditions by a systematic organization of the port. A central employment office was established with branches at every pier devoted to trans-Atlantic trade. Clearing houses were set up to facilitate the transfer of men from piers where labor was not needed to those where it was in demand. Employers made a daily report of their labor needs, including scheduled ship arrivals, loading plans, and other facts necessary to inform the bureaus of the number of longshoremen wanted and at what time. The plan was similar to the port organization at London and Liverpool, England, whose adoption has long been advocated by students of employment methods.

Special plans for handling farm labor were also devised. The services of all third- and fourth-class postmasters and rural mail carriers were enlisted to receive applications and send all orders not filled locally to the nearest public office. Newspapers in cities of over 20,000 which had no public offices were also asked to do similar work. Field agents were sent out in sections where the problem of farm labor was most acute. The cooperation of the Department of Agriculture was secured, and its country agents reported local shortages of help.

During the harvest season, temporary offices were opened in the wheat belt from Oklahoma to North Dakota to mobilize the harvest hands.

Besides its great expansion, the administrative machinery of the federal Employment Service was completely reorganized during the year. In the administrative work at Washington the following five divisions were created: Control, Field Organization, Clearance, Personnel, and Information. The Control Division was in charge of general correspondence, statistics and research, expenditures, and accounts. The Field Organization Division supervised the office organization, while the Clearance Division handled reports on labor supply and distributed unfilled requests for help. The Personnel Division dealt with the selection and training of help and worked out a standard classification of occupations. Publicity and the weekly *United States Employment Service Bulletin* were in charge of the Information Division. The thirteen employment districts into which the country had been divided were abolished, and the responsibility for organization centered in a federal director of employment in each state. To advise the directors on general questions of policy, "state advisory boards" were formed, consisting at first of two representatives of employees and two of employers. On October 15, 1918, these boards were asked to add two women members, who should also represent employers and employees, respectively.

Under its expanded organization the federal Employment Service, between January, 1918, and March, 1919, received applications for no fewer than 10,164,000 workers, registered 5,323,509 persons, referred 4,906,556 to positions, and reported 3,776,750 positions filled. Far-reaching dependence of employers on the service began on August 1, 1918, when by presidential proclamation all employers engaged in war work who employed more than 100 persons were required to hire their unskilled laborers through the service.

Following the cessation of hostilities, the service attempted to direct the replacement of soldiers and war workers in civil pursuits. In cooperation with chambers of commerce, local councils of defense, and other agencies, it established 1,850 special bureaus for the placement of returning soldiers and sailors. Representatives of the service were stationed in the

demobilization camps to help the soldiers go direct from the camp to employment.

But the service, in its expanded form, was entirely a creation of the war emergency, set up under the President's war powers and financed by war funds. Its machinery had to be built up and operated at the same time. In nine months it opened twice as many offices as England opened in four years. In the circumstances it was probably inevitable that certain weaknesses in organization and personnel should appear. Some employers also attacked the service on the alleged ground that it was dominated by organized labor, and it was charged that private fee-charging agencies carried on a subterranean campaign against it. In March, 1919, Congress refused to grant a deficiency appropriation of $1,800,000 to carry it to June 30, the end of the fiscal year. It was first stated that it would be necessary to cut down the offices 80 per cent, but through the cooperation of cities, states, and voluntary welfare organizations, the continuance of 364 offices was secured for a time. For the next fiscal year, however, the service asked Congress for $4,600,000 and received only $400,000. On October 10, 1919, it was announced that all the local offices were closed for lack of funds, and the only remaining activity would be the supplying of information to local public offices. Since that time the appropriation, including that for local service in the District of Columbia, has been little more than $200,000 annually. Even in the severe unemployment crisis of 1921-1922, Congress failed to appropriate the $400,000 recommended by the President's Conference, and the lack of adequate federal service added much to the difficulty of that time. With such meager funds, the service has functioned in a limited way as a coordinating and promotive agency for the various state and municipal offices. It publishes a monthly employment information bulletin and appoints the official head of each state service, or where there is none, a representative of local offices, as federal director of the United States Employment Service, at $1 per year. The appointment carries the franking privilege and in some cases small subsidies to offices. The federal Director-general reported cooperation with offices in 187 cities of 40 states, which placed, during the year ending June, 1925, 1,609,977 wage-earners. He stresses the importance of the work

in service for juniors and for farm labor, the latter in which the federal service employs temporary field workers supplies chiefly seasonal harvest hands, of which 70,000 to 80,000 were placed in 1921 and 400,000 in 1924.[1]

In April, 1919, after the first reduction in the service, a measure was introduced in Congress providing for a permanent federal employment system, cooperating with local offices on a subsidy plan. No action had been taken on the bill up to January 1, 1926, and in the temper of Congress at the time immediate action seemed unlikely. Yet, sooner or later the United States must fall into line with other modern industrial countries and organize its labor market through an efficient national system of public employment bureaus.

(3) *Foreign National Systems*

Though the provinces of Ontario and Quebec had established a few free offices prior to the war, the Canada employment service was developed to meet war needs, and has become a permanently organized federal system. In 1918, the dominion legislature passed the Employment Offices Coordination Act[2] which provides that the Canadian Department of Labor shall coordinate the provincial employment systems, issue such regulations as may be needed, and distribute to those provincial governments which have accepted the terms of the act, subsidies not to exceed 50 per cent of the amount expended by each upon its employment service. By 1923, all provinces, except Prince Edward Island, were cooperating, seventy-seven local employment offices and eight clearing houses had been established by the provinces and two interprovincial clearing houses by the dominion government.[3] During the first six years of its activity, this service placed over 2,500,000 wage-earners, a large number when it is considered that Canada is an agricultural country with a population of less than 10,000,000. Regulations of the Department of Labor provide an advisory national council composed of representatives of pro-

[1] United States Secretary of Labor, *Annual Report,* 1925, pp. 31-39.
[2] Canada, Laws 1918, C. 21.
[3] R. A. Rigg, "Employment Service of Canada," United States Bureau of Labor Statistics, *Bulletin No. 355,* 1924.

vincial and Canadian governments, employers', employees', farmers', and veterans' organizations.[1] By special arrangement, the railways of Canada grant to the employment service reduced rates for transfer of workers whose fares amount to $4 or more.

In Europe, also, the war emergency, and, subsequently, the great increase in unemployment, led to a tremendous development in public employment exchanges. This was particularly true of countries in which compulsory systems of unemployment insurance, administered by the state, were adopted.[2] "In 1911 nine European countries found employment for 2,700,000 workers through their public exchanges. In 1922 the same countries filled 8,000,000 posts in this way. In many other countries where public employment exchanges did not exist in 1911 they have since been set up." [3]

The first European legislation to establish a well-unified and distinctly national system of employment bureaus was the British Labor Exchanges Act of September 20, 1909.[4] Earlier efforts at establishing such bureaus were made by the Central Unemployed Body for London in 1906, under authority of the Unemployed Workmen Act of 1905, and the resulting offices supplied the main essentials of the present British system.

The act of 1909 gave to the board of trade, a body corresponding somewhat to our federal departments of the Interior, Commerce, and Labor, large discretionary powers as to the details of the system. The board was authorized to establish or take over labor exchanges wherever it thought fit, to make regulations for the management of these agencies, to assist bureaus maintained by any other authorities, and to establish advisory committees to assist in the management of the exchanges. With the approval of the treasury, it might authorize loans to cover traveling expenses of workers for whom employment had been found through an employment exchange. In

[1] Shelby M. Harrison and Associates, *Public Employment Offices*, 1924, p. 192.

[2] See p. 492.

[3] Albert Thomas, *Prevention of Unemployment*, International Association on Unemployment, 1924, p. 5.

[4] 9 Edw. 7, C. 7. For full text see *Bulletin of the International Labor Office*, 1910, p. 21.

1917 the administration of the system was transferred to the newly created ministry of labor.

The general regulations [1] made by the board under authority of the act set forth in great detail the rules of organization and management of the offices. Registrations of applicants must usually be made in person and renewed after seven days if employment is not obtained. During a labor dispute the parties are permitted to file statements in regard to the disagreement and applicants are to be informed of its existence. Applicants who refuse positions because of labor disputes, or because the wages offered are lower than those current in the trade, do not sacrifice any of their privileges to future services of the exchanges. The offices "shall undertake no responsibility with regard to wages or other conditions" beyond supplying what information may be in their possession.

The general regulations also prescribe the conditions on which railroad fares may be advanced as loans to workmen who are sent to other towns to take employment. No advances are to be made unless the distance to be traveled is more than five miles, nor to points where a labor dispute is in progress or when the wages offered are below the current rates. Care is also to be taken to avoid "unduly encouraging rural laborers to migrate from the country to towns." From the beginning of the employment exchange system up to March 31, 1924, a sum of about £300,000 was advanced to workpeople on terms of repayment by them or their employers, of which approximately £225,000 was advanced during the war. Nearly all has been recovered.

Prior to the transfer of the exchanges to the Ministry of Labor, advisory committees, consisting of equal numbers of representatives of employers and workmen appointed by the board of trade, with a chairman appointed by a majority of each group or chosen by the board, were formed for large areas. At least one was organized in each of the eight main districts of the system. The committtees considered mainly questions of general principle referred to them by the board of trade. But beginning in 1917, the ministry of labor developed a large number of local advisory committees having juris-

[1] *General Regulations for Labour Exchanges Managed by the Board of Trade*, January 28, 1910.

diction over one or more exchanges. Two hundred and fifty of such committees were established. Besides equal numbers of employers and employees they might include small numbers of other persons nominated by the Ministry to represent "other interests." They might consider any matter connected with the operation of the exchange. At the end of 1924 there were 324 such committees.

Special recognition has been given in Great Britain to the need of agencies for assisting juvenile workers in choosing an occupation, finding employment in that occupation, and avoiding frequent changes in the early years of their working experience. Under the Labor Exchanges Act and under the Education (choice of employment) Act of 1910 two distinct methods for the organization of juvenile exchanges have been developed.

Under the Labor Exchanges Act the board of trade issued in April, 1913, its special rules with regard to the registration of juvenile applicants. These rules provide that the board may appoint, after consultation with the local advisory trade committees, special advisory committees for juvenile employment, to be composed of persons representing employers and workmen, and of persons familiar with education and other conditions affecting juveniles. In addition to advising the board with regard to juvenile employment, the committees assist boys and girls with respect to their choice of occupation. Thus the juvenile exchange is made an integral part of the adult exchange, cooperation with the schools is secured through the special advisory committee, and duplication of effort is avoided. This system is perhaps the one best adapted to American needs.

Under the Education Act, on the other hand, the situation is reversed. The law authorizes "local education authorities to give girls and boys information, advice, and assistance with respect to the choice of employment,"[1] if such work is not being done by any other agency. Under this system, accordingly, the juvenile labor exchange is a part of the school system, frequently its offices are in the education building, and cooperation with the adult exchange established by the board

[1] Quotation from title of act, 10 Edw. 7 & 1 George 5, C. 37. For full text see *Bulletin of the International Labor Office*, Vol. VI, p. 36.

of trade is secured through the advisory committee. The system has many good features, such as the close supervision of the educational authorities over the placement work, but is weakened by imperfect correlation between the two exchanges. Liverpool furnishes a good example of this method, while the London offices typify the first.[1]

Starting with sixty-one offices in 1910, the number was increased until 391 were in operation during the war period. In addition there were 173 local agents in smaller centers, and 1,080 part-time officers "appointed primarily for the administration of unemployment insurance in districts where the establishment of an exchange would not be justified."[2] Although the country is only one-twenty-fifth as large in area as America, it is divided into nine districts—seven for England and Scotland, one for Wales, and one for Ireland. Each district has its divisional office or clearing house, which is in turn coordinated with the central office in London. During the war, further subdivision was made, and forty-five "clearing areas" were established, each containing a clearing office covering from two to thirty-one local exchanges. Notices of unfilled positions are first circulated among the offices of the clearing area, and then, if necessary, and if the position is one for which a worker may suitably be brought in from a distance, they are sent to the central office in London, from which a description goes next day to every exchange in the country. The national clearing house was said to circulate about 21,000 notices of vacancies a day in 1918. The exchanges bore the brunt of supplying the labor demands of the war and the not less arduous task of resettling workers and soldiers in peacetime occupations, filling about 1,000,000 vacancies annually. They are officially recognized to have been "of the greatest value" in this connection. Extension of unemployment insurance, under the act of 1920, necessitated a large increase of local agencies, now known as branch offices, in the smaller towns. By December, 1924, there were 382 exchanges and 772

[1] See Elsa Ueland, "Juvenile Employment Exchanges," *American Labor Legislation Review*, June, 1915, pp. 203-237.

[2] "Value of the British Employment Exchanges during the War," United States Bureau of Labor Statistics, *Monthly Labor Review*, September, 1918, p. 780.

branch offices in Great Britain. Those of Ireland were taken over by the governments of Northern Ireland and the Irish Free State in 1922.[1]

The volume of work of the exchanges from 1911 to 1924 inclusive is shown in the following table:

WORK OF BRITISH EMPLOYMENT EXCHANGES, 1911–1924[1]

Year	*Number of Registrations*	*Vacancies Notified*	*Vacancies Filled*
1911	1,965,991	769,661	608,475
1912	2,362,225	1,033,780	809,553
1913	2,836,366	1,183,356	895,273
1914	3,305,056	1,436,663	1,086,738
1915	3,047,025	1,761,090	1,279,918
1916	3,436,405	2,017,363	1,534,928
1917	3,432,154	1,974,383	1,536,383
1918	3,594,383	2,039,931	1,495,774
1919	5,928,947	1,909,489	1,258,965
1920	4,372,058	1,285,716	920,979
1921	8,929,483	986,266	807,328
1922	8,819,523	839,633	697,036
1923	8,774,644	1,056,970	893,713
1924	11,262,887[2]	1,345,394	1,143,742

[1] Great Britain, Ministry of Labor, *Report*, 1923–1924, London, 1925, pp. 88–89.
[2] These figures include repeated registrations of individuals. Number of individuals registered in 1922 was 6,137,418. See also Ministry of Labor, Committee of Enquiry into Work of Employment Exchanges, *Report*, London, 1921, p. 434.

National subsidies play an important role in European employment bureau legislation. Several countries try to raise the efficiency of local public employment bureaus by granting subsidies only to "recognized" offices, that is, offices which have conformed to the standards fixed by the national government. Switzerland, Belgium, and the three Scandinavian countries have legislation of this character. In the Swedish law subsides were authorized to meet the expense of special measures adopted to place workmen on the land, and the public bureaus have in consquence been especially useful in argiculture, drawing back into the country the superfluous labor of the towns. In 1912 of the 105,000 positions filled by the thirty-two bureaus, 26,000 were in agricultural pur-

[1] Great Britain, Ministry of Labor, *Report, 1923-1924,* London, 1925, p. 78.

suits.[1] The Danish Act of April 29, 1913, is one of the most important of European laws relating to public employment offices.[2] It provides for the establishment of a central exchange at Copenhagen, and authorizes branch exchanges to be conducted by towns, counties, or groups of towns. The Minister of the Interior is authorized to designate some of the recognized offices to act as central exchanges for sections of the country. To supervise the entire system the king must appoint a director of labor exchanges, among whose duties is that of maintaining cooperation among the recognized local exchanges. In these, as in nearly all European countries, the effect of the war was to increase the supervisory powers of the state, and in most cases to render compulsory establishment of a public employment office in each community. In France, one of the most backward of European countries in its public employment service, the system became much more effective during the war and in 1923 placed nearly one and a half million workers. Offices complying with governmental standards receive a subsidy of 40 per cent of expenses.[3] In Germany up to the outbreak of the World War several hundred public employment offices were maintained by cities and voluntary associations. The majority of these offices were united in a loose voluntary federation, and received subsidies from cities, states, and the national government. Early in the war an effort was made to secure greater centralization by the creation of an imperial employment bureau to cooperate with the municipal exchanges, trade unions, and other interested bodies.[4] A law of 1922[5] established in Germany a national system of public employment exchanges, coordinated and supervised by supreme state authorities, the minister of labor, a federal employment board, and state boards having jurisdiction over certain large areas. These boards are composed of appointees of federal authorities and exercise considerable power. They are assisted by executive committees or councils, each composed of a chairman, and equal numbers of representatives of public bodies

[1] Erik Sjostrand, *Quarterly Bulletin on Unemployment,* July-September, 1913, p. 885.

[2] *Bulletin of the International Labor Office,* 1914, pp. 1-5.

[3] International Labor Office, *Remedies for Unemployment,* 1922, pp. 61-64.

[4] Alix Westerkamp, *The Survey,* January 23, 1915, p. 441.

[5] International Labor Office, *Legislative Series,* 1922, Germany 3.

(states and communes), employers and employees. The chairmen and representatives of public bodies are appointed by state authorities, while the representatives of the employers and employees are elected by the employers' and employees' divisions of the federal and district economic councils, respectively. The local employment exchanges are established and managed by the communes, through their appointed manager and other officials, assisted by an executive committee, consisting of a chairman, who is neither an employer nor an employee, and an equal number of representatives of employers and employees, all appointed by the commune from lists of candidates submitted by organizations of employers and employees, respectively. Provision is also made for expert technical advisors and women representatives. Expenses are borne jointly by state and communes. Offices are provided with funds for transportation of workers to other districts.

Other countries in which joint committees representing employers and employees supervise the work of agencies and, in some cases perform the functions of actual boards of management, are Belgium, Denmark, Spain, Finland, France, Italy, and Switzerland. In Great Britain such boards are only advisory, but an investigating committee of 1919 decided that their powers ought to be extended. By act of 1921 Japan instituted a public employment system which by 1924 had established 138 exchanges and in 1923 placed 1,400,000 workers. In Russia, by order of the Commissariat of labor, 1924, its system of exchanges which had previously been used to carry out a compulsory distribution of labor, were converted into an optional public employment system similar to that of other countries. Australia has a well-developed system of public offices. New Zealand in 1923 and South Africa in 1925, by order of their respective labor departments, inaugurated a system by which the post offices cooperated with the existing public employment exchanges in placing workers, for the convenience particularly of small towns and rural districts.

3. Systematic Distribution of Public Work

A well-developed system of labor exchanges cannot, of course, create jobs, but in addition to bringing the jobless

workers quickly and smoothly in contact with such opportunities as exist it can register the rise and fall in the demand for labor. This knowledge would make possible intelligent action for the prevention and relief of unemployment through the systematic distribution of public work and the pushing of necessary projects when private industry's demand for labor is at a low level. Public work would then act as a sponge, absorbing the reserves of labor in bad years and slack seasons, and setting them free again when the demand for them increases in private business.

(1) *Emergency Work*

Probably ever since unemployment became a modern industrial problem there have been more or less insistent demands that the machinery of government be used for putting temporarily to work those who were displaced from private industry during a period of depression. It was felt that supporting the unemployed in this way, or, rather, thus giving them the chance under community direction to support themselves, was preferable to supporting them either by public relief or by private charity. It was not likely to cost any more, the stigma of pauperism would not be fastened upon self-respecting persons out of work through no fault of their own, and, finally, some improvement of permanent value to the community would have been furthered.

As early as the panic year of 1857, when 70,000 were estimated to be unemployed in New York alone, Mayor Wood of that city sent to the common council a message in which he said:

"I recommend that the comptroller be authorized to advertise for estimates for furnishing the corporation with 50,000 barrels of flour and a corresponding quantity of corn-meal and potatoes, to be paid for by the issue of a public construction stock redeemable in fifty years, and paying 7 per cent interest; these provisions to be disposed of to laborers to be employed upon public works, at their cost price to the corporation, all these works to be commenced forthwith under the proper departments. Twenty-five per cent should be paid in cash. Every man who will labor should be employed at a

fair compensation, and the supplies thus provided be distributed in return."[1]

Apparently the mayor's suggestion was not acted upon, but Central Park was then under construction and the city comptroller arranged to advance to the park commissioners $1,000 a day until such time as the city should take $25,000 of the bonds. The commissioners agreed in return to select not exceeding 1,000 of their workmen proportionally from the residents of each ward.[2] In this way a considerable portion of the work was made available when it could exert the largest influence in preventing destitution and demoralization.

During the severe unemployment crisis of 1914-1915, over 100 cities throughout the country made special provision for carrying on public work of various sorts, such as sewer-building, street- and road-making, quarrying, forestry, drainage, waterworks, building, painting, and even clerical duties. The work was maintained for periods ranging from less than a month to more than six months, thousands of men were employed in from two-day to two-week shifts, and hours and rates of pay were as a rule the same as for regular employees on the same grade of labor. In the majority of cases the officials in charge declared that they had secured full efficiency from the workmen, and some even stated that necessary work had been done at a distinct saving.

During the brief period of unusual unemployment in the winter of 1918-1919 a very general resort to the remedy of public work was noticeable. A large amount was readily available, since all but the most necessary projects had been postponed during the war. The federal Department of Labor listed 6,285 pieces of work to cost $1,700,000,000. In Ohio and New York the governors called special conferences of state and city officials with a view to pushing public works. It is difficult to learn the exact effect of these and of similar action in a number of cities, but in the opinion of the special employment assistant to the Secretary of War such activity was the

[1] *Report of the Massachusetts Board to Investigate the Subject of the Unemployed,* 1895, Pt. IV, pp. 7-8.

[2] *Report of the Massachusetts Board to Investigate the Subject of the Unemployed,* 1895, Pt. IV, pp. 9-10.

main cause of the decline in unemployment which began to be noticeable by the spring of 1919.

In 1920-1921, when unemployment again became a matter of grave concern, the unemployment survey of the American Association for Labor Legislation showed that, although many cities were raising funds by bonding or loans with which to push forward public works as a means of relief, few had previously made efforts to reserve necessary improvements for periods of depression or maintained an emergency sinking fund.[1] The Conference on Unemployment called by President Harding to meet in Washington, September, 1921, inaugurating the most thoroughgoing movement to meet the problem of unemployment yet attempted in the United States, included in its recommendations expansion of public works to the fullest extent by concerted action of municipal, state, and federal authorities.[2] Two months later it was reported to the standing committee of the conference that 209 out of 327 cities, whose population was 10,000 or more, had organized "mayor's committees" or signified their ability to carry out the recommendations of the conference with machinery that already existed.[3]

As the use of public work as a means of relieving unemployment has spread, city officials have increasingly felt the hampering effect of charter limitations on the expenditure of money. Many makeshift devices have been adopted for defeating these restrictions, such as raising money by public subscription, borrowing without interest, or transfer of funds between departments, and in some cases business men have had to furnish bonds to save the city officials from liability. Consequently the conviction has been growing that budgetary methods and, if need be, city charters must be modified to permit greater freedom in the use of money for these undertakings.

Experiences with emergency work have not always been gratifying. Poor work, increased expense to the community, and political favoritism in the selection of applicants are among the faults which have frequently interfered with its

[1] *American Labor Legislation Review,* September, 1921, pp. 207-210.
[2] President's Conference on Unemployment, *Report,* 1921, pp. 20 and 89.
[3] United States Bureau of Labor Statistics, *Monthly Labor Review,* December, 1921, p. 117.

accomplishing what was expected of it. On the whole, however, the opinion has been growing that these flaws are not inherent, but due to poor administration, and that, if properly managed, emergency work can be made an important agency in maintaining during slack periods the labor reserves needed when industry is booming. To secure the best results it must, of course, be kept out of the hands of politicians.

The policy of giving temporary relief employment is embodied into law in the English Unemployed Workmen Act of 1905, by which the central administrative body for London was authorized to provide temporary work for the unemployed.[1] An attempt was made in this statute to differentiate relief employment from charity by stipulating that laborers accepting work were not to be disfranchised. In Germany relief work for the non-resident unemployed is often associated with hotels for itinerant workers. Several hundred of these, known as *Herbergen,* are private enterprises, but a more modest type of relief stations, or "home shelters," is conducted by the public authorities.

There is no similar legislation in the United States, but the city of Seattle made a suggestive experiment in the care of the itinerant worker during the winter of 1914-1915. In that city public funds were advanced to maintain an itinerant workers' home, popularly known as "Hotel Liberty," and arrangements were made for work in clearing grounds, grading roads, and work on the pipe-line right-of-way. For two days' work on one of these jobs a man, registered at the hotel, was given a ticket good for twenty-one meals. The work was rotated so as to give all a chance to earn their board. The hotel was ably managed and more than repaid expenses. The Seattle Chamber of Commerce recommended that the institution be made permanent, and it has been suggested that a chain of similar hotels for itinerant workers might be established along the coast.

(2) *Adjustment of Regular Work*

It is fast becoming recognized, however, that to wait until the emergency has overtaken the community before the move-

[1] 5 Edw. 7, C. 18, Sec. 1 (5).

ment to provide public work is set on foot is wasteful and productive of unnecessary hardship. Public officials are therefore more and more turning their attention to preparing in ordinary times for the period of stress which experience has shown is likely to follow in a few months or a few years.

One of the earliest American experiments in this direction grew out of an attempt to meet a specific emergency. In the winter of 1910-1911 the city of Duluth, Minn., confronted by an unusual number of seasonal workers turned adrift by the closing of transportation on the Great Lakes, decided to anticipate its need and cut through a wall of rock which blocked the chief thoroughfare. Drilling and blasting were done by regular city employees, but preparation of the rock for the crusher was assigned to the unemployed, who were given an average of three days' work each. Applicants were hired and retained only if they were fit and willing to work, and wages were set at $1.20 a day, a little less than the current rate, in order not to attract those who could find employment elsewhere. Payment in meals, clothing, employment agency fees, or railroad fare was given by the associated charities, which referred the men to the work and was reimbursed by the city.[1] The plan worked so successfully that it was followed in subsequent years, and in addition the city has shifted much of its sewer building to the winter season to assist in equalizing the amount of employment.

Such foresighted arrangement of public work is capable of considerable extension, and may be efficaciously used to counteract cyclical as well as seasonal fluctuations. The English statistician Bowley estimates that if in the United Kingdom a fund were set aside for public work to be pushed ahead in times of depression, an average of $20,000,000 yearly, or only 3 per cent of the annual appropriation for public works and services, would be sufficient to balance the wage loss from commercial depression.[2] If his suggestion were generally accepted, in each community or country a program of the amount of public work contemplated for several years in advance would

[1] W. M. Leiserson, "The Duluth Rock Pile," *The Survey*, September 20, 1913, pp. 729-731.

[2] Great Britain, Royal Commission on the Poor Laws, *Minority Report*, 1909, p. 1195.

be laid out and then carefully planned to be executed in the lean years. Thus public work, instead of declining and thereby accentuating the depression, as is now often the case, would exert a strong influence toward stability. European experience shows that it is essential to the success of such a program that the work be done in the ordinary way, the workers being employed at the standard wage and under the usual working conditions and hired on the basis of efficiency, not merely because they happen to be unemployed.

Americans seem particularly unwilling to prepare in advance for periods of industrial depression. They appear to think of the unemployment problem and to take action on it only in a crisis. Yet within the last few years the number of American cities acting upon this principle has steadily grown. Several progressive communities have made definite plans to reserve work on unimproved parks, sewers, and streets for future dull periods. Several, also, without planning definite undertakings, have issued bonds or established contingent funds to provide the resources when needed. In Alameda, Cal., a special annual tax of 1 cent on each $100 of taxable property was established in 1915 to provide a relief fund for hiring on public work "unemployed or indigent residents."

An interesting development in this direction was the Idaho law of 1915, which, probably for the first time in the history of the country, recognized the "right to work." Every United States citizen who had been a resident of the state for six months, and who did not possess more than $1,000 worth of property, was guaranteed sixty days' emergency employment on the highways or other public work yearly. But before being put into operation to any large extent, the law was declared unconstitutional on technical grounds involving the method of appropriating funds and not the general principle.[1] It has not been reenacted.

Pennsylvania, in 1917, was the first state to establish a permanent fund to be used for public work in slack seasons.[2] The machinery for administering the fund was set up, and $40,000 appropriated. In 1919 an opinion by the state attorney-general, to the effect that the appropriation did not lapse at the

[1] Epperson *v.* Howell, 28 Idaho 338, 154 Pac. 621 (1916).
[2] Pennsylvania, Laws 1917, No. 411.

end of the regular appropriation period, facilitated its operation.

In May, 1921, California enacted a law[1] providing for "the extension of the public works of the state . . . during periods of extraordinary unemployment caused by temporary industrial depression and regulating employment therein." The state board of control is required to secure from the various departments, bureaus, boards, and commissions of the state tentative plans for such extension of public work; the bureau of labor statistics in cooperation with the immigration, housing and industrial welfare commissions is required to keep constantly advised of industrial conditions throughout the state and to report to the governor when it has reason to believe that a period of extraordinary unemployment exists. In such case, the board of control is authorized to make at its discretion distribution of the available emergency fund among the said several departments, bureaus, etc., for such extension of public work as will afford most relief to the unemployed and benefit to the public. California thus had the machinery started to relieve her unemployed, estimated to be over 100,000 in the winter of 1921, and was able to supply the President's Conference with data.[2] In 1923, Wisconsin enacted a law similar to that of California.[3] In 1922 the Massachusetts legislature authorized the creation of a temporary unpaid commission to promote the clearing of the forests in metropolitan parks of fallen trees and branches, and appropriated $100,000 to carry on the work.[4] In 1924 a bill similar to the laws of California and Wisconsin, but less far reaching, passed the lower house. It was reintroduced in strengthened form in 1925 and 1926.

The federal Congress of 1921-1922 responded to the recommendations of the President's Conference on Unemployment regarding expansion of public works to the extent of appropriating $75,000,000 to be distributed among the states for road construction as authorized by the amended act of 1916 providing aid in construction of rural post roads.[5] This was

[1] California, Laws 1921, C. 246.
[2] California Bureau of Labor Statistics, *Biennial Report*, 1921-1922, pp. 346-347.
[3] Wisconsin, Laws 1923, C. 76.
[4] Massachusetts, Laws 1922, C. 13 and 232.
[5] United States, Laws 1921, C. 87.

$50,000,000 more than any previous annual appropriation under the act. The Kenyon bill, however, providing for adoption of a permanent federal policy of long-range planning, met with little favor. Reintroduced in 1923, it was reported favorably by the Senate committee. In February, 1925, President Coolidge in an address to the Associated General Contractors of America recommended the idea of utilizing construction, particularly of public works, as a method of stabilizing employment in times of depression. In the following month, however, when a bill appropriating $150,000,000 for public buildings passed the House of Representatives, the Administration failed to exert itself for inclusion of a provision applying the principle endorsed. In 1926 after the corresponding bill was introduced in the Senate, an amendment looking toward the same object was not effectively supported.

Though legislatures have been slow to recognize the need of legislation along this line, public interest in the subject increases.[1] The committee organized to continue the work of the President's Conference, in its reports of 1923 and 1924, recommended in strengthened form long-range planning of public works to avert periods of unemployment.[2] In January, 1924, the Federated American Engineering Societies, in order to assist in bringing about the adoption of a well-considered public building policy by the federal government, called together in conference at Washington representatives of a number of national organizations, including the American Association for Labor Legislation which since 1915 has stressed extension of public works in its Standard Recommendations for the Relief and Prevention of Unemployment, and has conducted a campaign in the movement for advance planning.[3] The conference fully approved the principle and adopted a resolution declaring that "the advance and coordinated planning of public works is sound economy" and that "a coordinated functioning of all public works agencies would be able to stabilize business

[1] L. D. Edie and others, *The Stabilization of Business*, 1923, chap. VII.

[2] Committee of the President's Conference on Unemployment, *Business Cycles and Unemployment*, with a foreword by Herbert Hoover, 1923, p. 27 and chap. XIV.

[3] *American Labor Legislation Review*, September, 1921, "Standard Recommendations for the Relief and Prevention of Unemployment." pp. 194 and 218; March, 1923, "Unemployment and Public Works," by Otto T. Mallery, p. 25.

and employment."[1] An advisory council composed of representatives of a number of interested organizations was created to assist in conducting a campaign for establishment of a department of public works in the executive arm of the federal government, which would facilitate coordinated planning of public works in times of depression. Bankers' awakening interest in such a movement was indicated by a bulletin issued in 1925 by the Chase National Bank of the City of New York which advocated long-time programs of federal, state, and municipal construction with a view to timing public expenditures to periods of business depression and providing state revolving funds for working capital to obviate injudicious borrowing.

In Great Britain the use of public work on a national scale as an equalizing reservoir for the labor market was partially authorized by the Development and Road Improvement Funds Act of 1909.[2] This law set aside sums of money which might be advanced either as grants or as loans to associations not organized for profit, for the purpose of aiding and developing agriculture and rural industries, forestry, land reclamation and drainage, rural transportation, harbors, inland navigation and fisheries. The act was not passed primarily as an unemployment measure, but contained the provision that when the execution of any work involved the employment of labor on a considerable scale the commissioners must take into consideration "the general state and prospects of employment." Under this clause a certain amount of influence could be exerted toward the timely initiation of public improvements, but its scope was usually overestimated.[3] In France and Germany the policy of pushing public work in slack seasons has had a considerable development under municipal control.

Most European governments encouraged the pushing of public works for relief of the widespread unemployment following the war, both by granting subsidies and loans to municipalities for financing such works and by directly undertaking them. This was a particularly opportune method of relief as

[1] *Ibid.*, June, 1924, p. 159.
[2] 9 Edw. 7, C. 47.
[3] A. D. Hall, "The Development Act and Unemployment," National Conference on the Prevention of Destitution (Great Britain), *Report of the Proceedings of the Unemployment Section,* 1911, p. 245.

public works had of necessity been neglected during the war. By 1922, 510,000 workers were employed in Great Britain on 3,000 municipal undertakings subsidized by the government. The severity and long-continuance of the business depression revealed the difficulties of this method of relief. Report of the investigation of the situation in England by Bowley and Stuart in 1924[1] states that authorities consulted appeared to think that when the work in hand was completed, there would be no more to be done. On the other hand, in many quarters the conviction is growing that if unemployment relief is necessary, it is better to render it in return for labor than as a straight pension. Some countries, notably Italy and Switzerland, have initiated, on a large scale, enterprises to provide work for the unemployed that would not otherwise have been undertaken. For the same purpose, beginning with Germany in 1920, several countries have enacted legislation providing for "productive insurance," that is, the use of part of unemployment insurance funds for financing public (or, in certain cases, private) enterprises.[2] In most countries, public works have furnished relief for manual labor only, but Swiss decrees of 1919 and 1922 include provisions for relief work for intellectual and artistic workers, such as research, drafting plans and decorating public buildings.[3]

The management or organization of public works has shown an interesting development. In Britain, they are managed by the city councils, the recruiting of labor being supervised by the joint advisory committees of the employment exchanges; in Switzerland, the cantons issue regulations; but in most European countries the management is in the hands of joint committees composed of representatives of the government, employers and employees. In Italy and other countries cooperative labor bodies take charge of some of the undertakings.[4]

The principle under discussion has taken firm hold among

[1] A. L. Bowley, F. D. Stuart and others, *Is Unemployment Inevitable?* 1924, p. 372.

[2] International Labor Office, *Studies and Reports,* Series C, No. 10, p. 61.

[3] *Ibid.,* No. 4, p. 5, and *International Labour Review,* February-March, 1923, "Employment and Unemployment," p. 319.

[4] International Labor Office, *Remedies for Unemployment,* 1922, pp. 107-109.

those interested in combating involuntary idleness, and in 1913, as the result of careful studies in many countries, the following recommendations were laid before the International Conference on Unemployment: (1) That public works be distributed, as far as possible, in such a way that they may be undertaken in dull seasons or during industrial depression; (2) that budget laws be revised to facilitate the accumulation of reserve funds for this purpose; (3) that permanent institutions be created to study the symptoms of depression in order to advise the authorities when to initiate the reserved work; (4) that such work as land reclamation and improvement of the means of communication, which would tend to increase the permanent demand for labor, be especially undertaken; and (5) that in order to secure the fullest benefits from the reserved work, contracts should be awarded not as units, but separately for each trade. The first International Labor Conference, meeting at Washington in October, 1919, recommended to member countries that they should "coordinate the execution of all work undertaken under public authority, with a view to reserving such work as far as practicable for periods of unemployment and for districts most affected by it." A number of countries have taken steps to put this recommendation into practice, usually by the creation of committees with investigating, advisory, and, in some cases, administrative powers. Among countries which have made most definite progress in the execution of plans are Italy, Switzerland, and the Netherlands.[1]

4. Regularization of Industry

While methods of utilizing public work to counteract the fluctuations of employment in private industry have for some time occupied the attention of lawmakers, recently the demand has found legislative expression that private industry turn some attention to solving the problem at its source by reducing, if not eliminating, these fluctuations. Regularization of industry is demanded by the interests of employer and employee alike. The employer, with an expensive plant, requires steady production to keep down overhead expenses and to secure the best

[1] International Labor Office, *Remedies for Unemployment*, 1922, p. 116.

returns from the business; the employee needs steady work to prevent destitution and consequent demoralization. It is not surprising, therefore, to find governments exerting pressure to the end that, as far as possible, every job be made a steady job. Society has in the past attempted to adjust itself to the ups and downs of business; it is now beginning to insist that business avoid ups and downs.

The eventful period between 1914 and 1926 stimulated thought and action along this line. During the war, the temporary expansion of the administrative powers of governments brought to them a large amount of information and the necessity of putting it to immediate use. The President's Conference on Unemployment and the standing committee appointed to carry on its work in their recommendations stressed the responsibility of governments in collecting and distributing information and forecasting the probable fluctuations in business; the responsibility of the banking system in regulating the credit upon which business depends, and the responsibility of the various industries and corporations in making use of all available information and studying methods of management in order to avoid undue inflation in times of prosperity with its consequences of following depression.[1]

In carrying out the first of these recommendations, the collection and dissemination of information, much progress has been made by several departments of the government, particularly by the Department of Commerce[2] and the Federal Reserve Board, both of which publish periodical bulletins for the guidance of the business world. Probably still more far-reaching has been the effect of the banking system in controlling loans and particularly of the federal reserve system, established in 1913, in advancing rates on credit when in its judgment industry is approaching a "boom" and lowering rates when a depression is threatened. A careful examination of these changes in rediscount rates and the following rise or fall in business activity, together with statements of the Federal Reserve Board, seem to show that between 1919 and 1926, at

[1] Committee of the President's Conference on Unemployment, *Business Cycles and Unemployment*, 1923, pp. xix to xxvii.

[2] Secretary of Commerce, *Annual Reports*, 1923 and 1925.

least, some measure of control was attained.[1] Central banks of other countries have taken similar action, especially during the general discontinuance in Europe of the gold standard.[2] Governments and financiers have also increased their efforts to revive the industries of their various countries by high tariffs to shut off foreign competition, special guaranteed payment schemes for exports, and subsidies or loans on easy terms to private enterprises, in many cases with the avowed intention of relieving unemployment. For the same end, emigration has been encouraged and immigration checked.[3]

Industry itself has been held particularly accountable for seasonal depressions. Perhaps the greatest advance toward mitigating these has been made by the construction industry, characterized as "the balance wheel of American industry." In a special report of the committee of the President's Conference, it is urged that both public and private construction be transferred as much as possible from summer, the busiest season, to winter, the dull season. The main steps recommended to accomplish this are education of those who contemplate building in regard to advantages of prices and the labor market in winter, pecuniary inducement to place orders for the dull season, and perfection of devices to overcome weather difficulties. The principles embodied in these recommendations have been endorsed by builders' associations, and it is observable in the large centers that some progress has already been made in putting them into execution. The fact that public works form one-fourth of the total value of yearly construction in the United States makes the proper timing of their execution a powerful factor in avoiding seasonal as well as cyclical depressions.[4] Among important contributions to technical information in regard to regularization of employment by efficient management is that by the American Engineering Societies in connection with their surveys of various industries.[5]

[1] J. R. Bellerby, International Labor Office, *Studies and Reports,* Series C, No. 11, C. 3.
[2] International Labor Office, *Studies and Reports,* Series C, No. 8, pp. 144-154.
[3] *Ibid., Remedies for Unemployment,* pp. 120-130.
[4] Committee of the President's Conference on Unemployment, *Seasonal Operation in the Construction Industry,* 1924, chap. XII.
[5] Federated American Engineering Societies, *Waste in Industry,* 1921.

Methods of regularization are as various as the industries concerned, if not as various as the individual establishments. Many employers have found it economical to organize employment departments for the purpose of studying and remedying fluctuations in the size of the working force; and in Boston, New York, and Philadelphia, associations of employment managers were formed as early as 1912 to discuss their common problems. Through these departments considerable hardship has been avoided by reducing excessive "turnover" of labor, by transferring workers from slack departments to busy ones instead of discharging them, and by employing the whole force on part time rather than part of the force on full time. Careful planning of output for months or even for a year ahead, the development of supplementary lines such as tennis shoes and rubber tires in a rubber-shoe factory, and special measures to overcome weather conditions, such as the introduction of artificial drying in the brick industry, have also been found helpful. Through cooperation with other employers for the maintenance of a common reserve of labor instead of a separate supply for each firm, the intermittent character of such occupations as the building trades and dock work has been effectually reduced. The experience of over 100 American firms (names and addresses given) who have pioneered in the stabilization of employment within their own establishments is given in a book by a group of economists and business men.[1]

Perhaps the most interesting experiment in "decasualizing" casual employment is the system now in force in England, where for more than half a century thousands of men have eked out a precarious and irregular longshoreman's livelihood. Each ship company sought to attract enough men every day to meet the need on the busiest days, and it has even been alleged that some employers deliberately parceled out the work so that many more than the usual number employed were encouraged to be on hand and available when wanted.[2]

To counteract the demoralizing results of this chronic underemployment, what is known as the Liverpool dock scheme

[1] S. A. Lewisohn, E. G. Draper, John R. Commons, Don D. Lescohier, *Can Business Prevent Unemployment?* 1925.

[2] R. Williams, *The Liverpool Docks Problem,* 1912, pp. 10-12.

was inaugurated by the British Board of Trade in July, 1912, under authority of the unemployment insurance part of the national insurance act. In the first year of its operation sixty-eight employers became parties to the plan, and 31,000 dockers were registered.[1] A metal tally was issued to each man; only men holding tallies are employed, and new tallies can be issued only with the approval of the joint committees of workmen and employers which are assisting to administer the scheme. Workmen who fail to be hired at the employers' regular stands go to one of fourteen "surplus stands," which are in communication by telephone with one another and with the six sectional clearing houses that have been established in connection with the government labor exchange. The system makes it possible to do the same work with fewer men, but these are employed much more regularly. The advantages of maintaining one reserve for the industry as a whole, instead of separately for each employer, are obvious. The adjustment caused temporary hardship for some workmen but it was hoped that in time each employer would keep the nucleus of a force on regular wages and rely for extra men on a fluid reserve to be maintained jointly by all the employers of the port.[2] The Great War and subsequent conditions interfered with the normal working-out of the experiment. With minor modifications, however, it was still in force in 1926 and the principle of registration has been so widely approved by both employers and workers that plans embodying it have been introduced in nearly all British ports. In 1919 the central committee of the joint industrial council, a coordinating body representing employers and employees of all docks, presented a "model scheme" to be considered, with modifications to suit varying conditions, by all local councils. As a matter of fact, however, the scheme has not accomplished much in decasualization, even on the Liverpool dock where it has been longest on trial. This is doubtless partly due to widespread unemployment but also partly to the fact that a large amount of surplus labor is necessary in an industry so irregular as the loading and

[1] Beveridge and Rey, "Labour Exchanges," *Quarterly Bulletin on Unemployment*, July-September, 1913, p. 789.

[2] See R. Williams, *First Year's Working of the Liverpool Dock Scheme*, 1914.

unloading of ships. The idea first put forth by the transport workers' federation in 1918, and in the following year endorsed by the Shaw report on the inquiry into dockers' claims, that the industry should furnish each registered docker a minimum weekly maintenance wage, has steadily gained ground, as seemingly the only possible solution of the difficulty.[1]

Under the war-time extension of the United States Employment Service, a similar scheme was started for New York longshoremen, but it had to be abandoned when the service was curtailed. A similar plan inaugurated in 1921 by employers of dock labor in Seattle, Wash., is said to have improved conditions considerably. Policies are determined by four joint committees—executive, employment, working conditions, and safety—each composed of equal numbers of representatives of employers and employees, the former appointed by the management and the latter elected by the employees. The employees' representatives are relieved from the job on pay to attend committee meetings. The policies determined by these committees are executed by the management. In this system the body of registered reserve workers to meet extra demand is divided into "gangs" which are usually called upon in order of "lowest earnings gang" first, thus automatically tending to equalize earnings. There is also a "casual list" of men who have applied for registration and are drawn upon in case of extra emergency, and thus tried out for advancement to registration when needed. It is said by a representative of the employers that the most striking result of the scheme has been to eliminate casual labor to such an extent that the average monthly earnings of the men have been raised (without increased cost to the ships) from $59 for longshoremen and $40 for truckers in January, 1921, to $140 to $175 for the former and $100 to $135 for the latter in 1925.[2]

Employers, however, are frequently no more farsighted than are other persons in the community, and may neglect what is obviously to their own and other persons' economic advantage if it requires much additional exertion or forethought. Hence

[1] E. C. P. Lascelles and S. S. Bullock, *Dock Labour and Decasualization*, 1924, pp. 84-124.

[2] F. P. Foisie, *Proceedings of the National Conference on Social Work*, 1925, p. 306.

arises the need for governmental stimulus toward regularization that is found in some of the newer legislation on unemployment.

Directly after the war, considerable legislation was enacted in European countries compelling employment of ex-soldiers or forbidding dismissal of employees in certain cases. These, however, were for the most part temporary measures designed to lessen hardship in the change from war to peace conditions. Of more permanent character is legislation enacted since 1919 not only in most European countries but also in Mexico and several South American countries penalizing employers for dismissal of employees without due notice or just cause. This type of legislation varies widely in scope and character, being in some cases, as in the Belgian act,[1] designed primarily to prevent unemployment, and in others, as in several Mexican states,[2] also to prevent discrimination against union labor, and various injustices. In Europe there has also been considerable legislation since the war to compel employers in case of partial shut-down to furnish part-time work to a maximum number of employees.

Headway can be made to some extent against seasonal fluctuations also, under the proper encouragement of an efficient labor exchange system. During the winter, for instance, it has been suggested that building laborers could be assisted to take up ice-cutting or logging, or to secure some of the less skilled work in shoe, textile, or other factories which are busier at that season. Through the London employment exchanges women's work in ready-made tailoring, which is busiest in the spring and fall, has been dovetailed with hand ironing in laundries, which is heaviest during the summer.

The Illinois and Pennsylvania laws of 1915 establishing state employment bureaus instruct the administrative authorities to take steps toward the regularization of employment, both public and private. Interesting possibilities are suggested by these measures, but in actual practice little, if anything, has been done under them. A more definite inducement to the regularization of industry on a comprehensive scale is offered through the establishment of unemployment insurance.[3]

[1] International Labor Office, *Legislative Series*, 1922, Belgium 2.
[2] *Ibid.*, 1923, Mexico 1.
[3] See "Unemployment Insurance," p. 486.

CHAPTER VII

SAFETY AND HEALTH

Prominent among the problems which the industrial revolution brought in its wake is that of maintaining safety and health in work-places. As long as industry was chiefly agricultural, or carried on about the family hearth, with tools relatively few and simple, the individual laborer might control the physical conditions under which he worked. But the drift during the late eighteenth and early nineteenth centuries from farming to manufacturing, and from homestead to factory methods, placed a growing proportion of wage-earners in a new environment. They toiled now upon premises controlled not by themselves, but by another—the employer. Instead of working in isolation or in small groups, hundreds were collected under one roof where the error or illness of one might affect all his neighbors. New machinery, new chemical processes, new forces such as electricity and compressed air have been ceaselessly developed, each involving its own special dangers. Upon all production, speed, the ruling spirit of a machine age, has imposed its exactions. Nor have subjective factors been without their influence. Ignorance, recklessness, and inertia, manifested now by the leaders of technical research, now by the masters of industry, and not infrequently by the workers themselves, have contributed to create a situation in which the statistics of industrial accident and disease are often justly compared with those of the world's great battles.

Conservation of the life, health, and energy of our millions of wage-earners is not an individual question. It is a social question, demanding social action. This does not mean that private or voluntary efforts of the workmen, or of industrial managers, or of physicians should be in any way discouraged. On the contrary, such voluntary efforts should be vastly increased. But the prevention of industrial accidents and diseases

is too great an undertaking to be left entirely to individual action.

Though more than half the waking hours of the ordinary wage-earner are spent at his place of employment, it is one of the fundamental disharmonies of present-day industry that he has little or no control over the conditions which there surround him, and which profoundly affect his well-being and even his life. Individual complaint frequently leads to loss of employment rather than to improvement of conditions. As a member of a labor union the worker's power is potentially increased, but often, for various reasons, is not effectively exerted. Regulation of the physical conditions of employment, on the other hand, cannot be safely entrusted to the individual employer, whose principal business, under competitive conditions, is to secure profits. While many employers are exercising the utmost consideration for their workpeople out of motives of humanity, and many more are doing so on grounds of efficiency, such motives cannot be said to have developed into a controlling principle of industrial life. Nor can the industrial accident and disease problem be left to medical treatment alone, for prevention and not after-care is the solution. Not only on account of the magnitude of the problem, but also because of its nature, the protection of the wage-earner from dangerous conditions of employment is a proper function of government.

Frequently, it happens that without the aid of uniform legal regulations to force the recalcitrant minority into line, even a vast majority of the manufacturers in an industry are powerless to bring about reforms which they freely admit are desirable. A striking example of this was revealed by the three-year campaign which culminated successfully in the poisonous phosphorus prohibition act. Match manufacturers representing 95 per cent of the total product testified before Congress that they could not substitute a harmless compound for the slightly cheaper poison without a uniform law compelling all employers in that industry to abandon the poison. All of the other match manufacturers, representing the remaining 5 per cent of the product, stood out stoutly to the last, even declaring that they would close their factories before they would submit to this sanitary measure, already in compulsory

that anything like complete returns of accidents are obtained."[1]

Since that time, in spite of its shortcomings and inadequacies, so useful has reporting proven itself as a guide for inspection, safeguarding, and advanced legislation, that it has steadily spread not only to new states, but to new branches of industry.[2] The kind of accidents to be reported varies greatly, ranging from all injuries in the more advanced states to only those which result in death or in the incapacity of the injured workman for a stated length of time, as for two days, one week, and in rare cases for two weeks. The time of reporting is variously fixed at "immediately," twenty-four or forty-eight hours, two weeks, once a month, and, in Louisiana, "semiannually." Notification by mail, on a blank provided by the proper state authority, is in most cases sufficient; but in connection with fatal railway and street-car accidents a telephone or telegraph report, followed by a detailed written statement, is often obligatory. Reports are usually made to the state department of factory inspection or to the accident compensation authorities, and a wide range of questions must be answered. A standard schedule adopted for use in important industrial states containing about half the manufacturing wage-earners of the country is divided into sections on (1) employer, place, and time; (2) injured person; (3) cause; and (4) nature and extent of injury; and each section asks a number of questions found by long experience and careful study to be most successful in eliciting the desired information.[3]

While much progress has been made since the beginning of the reporting movement in 1886, much remains to be done in the direction of extending and of introducing uniformity into the system. In a few states, and for a limited number of

[1] United States Bureau of Labor, *Bulletin No. 12,* September, 1897, p. 565.

[2] A standard bill for industrial accident reports, drafted by the American Association for Labor Legislation in 1912, has been passed in several states.

[3] This schedule was prepared by the American Association for Labor Legislation, and has been indorsed by the American Statistical Association, the United States Bureau of Labor Statistics, the Workmen's Compensation Service Bureau, and the National Safety Council. By October 1, 1915, it had been adopted by the labor departments of California, Iowa, Massachusetts, Minnesota, Nevada, New Hampshire, New York, Pennsylvania, and Washington.

industries, good work is being done;[1] but the failure to cover all dangerous occupations and the wide differences in the meaning of reportable accident still render the data confusing and incomparable as between states. For a comprehensive view of the situation in all industries and throughout the country dependence for the present must be placed on the more or less scholarly estimates which appear from time to time.

The United States Commission on Industrial Relations estimated that in 1915 there were 35,000 industrial deaths and 700,000 non-fatal injuries causing over four weeks' disability.[2] Mr. F. S. Crum, of the Prudential Insurance Company, set the number of industrial deaths in 1919 at 23,000.[3] Mr. Sidney J. Williams, secretary of the National Safety Council, estimated the number of industrial fatalities for 1919 as 23,000 and of non-fatal injuries as 2,977,000.[4] The late Mr. Carl Hookstadt, of the United States Bureau of Labor Statistics, estimated in 1923 that under normal industrial conditions there are annually some 2,453,418 industrial accidents in the United States, of which 21,232 are fatal.[5]

The chart on the following page, prepared by statisticians of the Prudential Insurance Company of America, indicates the relative hazard of various industries.

Mining, with metal mining predominating, appears to be the most dangerous.[6] Stevedoring, electrical work, and quarrying are high on the list, while general manufacturing, including ordinary factory work, is apparently safer than agriculture, in which the introduction of power-driven machinery has of

[1] Especially excellent is the reporting work done by several industrial accident or workmen's compensation boards, notably those of California, Massachusetts, New York, Ohio, and Wisconsin.

[2] United States Commission on Industrial Relations, *Final Report*, p. 95.

[3] Quoted in United States Bureau of Labor Statistics, *Bulletin No. 304*, p. 59.

[4] United States Bureau of Labor Statistics, *Bulletin No. 304*, pp. 59-60.

[5] United States Department of Labor, *Monthly Labor Review*, November, 1923, pp. 1-9.

[6] The inaccuracy of available accident statistics, as well as differences in classification and statistical method make tabulations of this type somewhat variable. Mr. Hookstadt's study (see United States Bureau of Labor Statistics, *Monthly Labor Review*, November, 1923, pp. 1-9), finds the electric light and power industry most dangerous, for example, with lumbering, water transportation, and police duty all preceding mining in order of hazard.

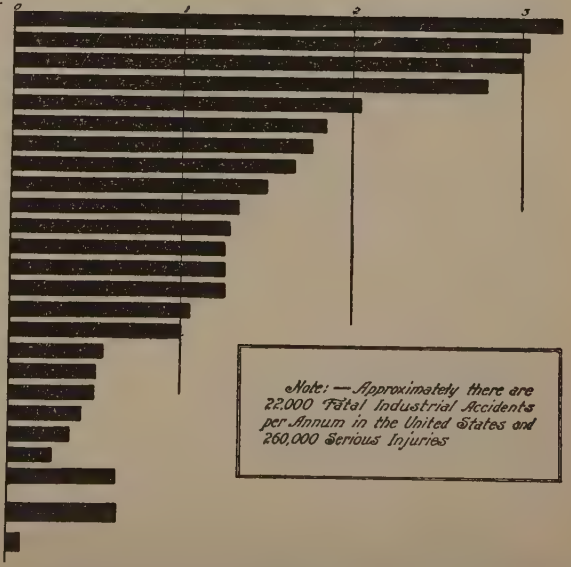
Fatal Industrial Accidents

Estimate for the United States for 1920

Rate per 1,000 Employees

Males

	Employees	Fatalities	Rate
Metal Mining	145,262	468	3.22
Coal Mining	765,000	2,317	3.03
Fisheries	160,000	480	3.00
Stevedoring, Longshoremen	75,000	209	2.79
Electricians (Light and Power)	105,541	215	2.04
Coke Ovens	28,741	53	1.84
Policemen, Firemen, Watchmen	250,000	440	1.76
Quarrying	75,505	125	1.66
Lumber Industry	553,000	837	1.50
Navigation	255,900	341	1.33
Explosives	25,000	32	1.28
Ore Smelting and Dressing Plants	61,708	77	1.25
Building and Construction	1,575,000	1,969	1.25
Railways, Steam	1,960,500	2,454	1.25
Railways, Street and Electric Interstate	294,829	311	1.05
Teamsters and Draymen	720,000	720	1.00
Oil and Gas Wells	65,300	35	0.54
Telephone and Telegraph (Linesmen)	296,000	148	0.50
Iron and Steel	372,714	183	0.49
Paper and Pulp	80,000	34	0.42
Agricultural Pursuits	11,600,000	4,060	0.35
Manufacturing (General)	7,900,000	1,975	0.25
All Other Occupied Males	6,500,000	4,017	0.62
All Occupied Males	33,870,000	21,500	0.63
All Occupied Females	8,560,000	642	0.075



Note: — Approximately there are 22,000 Fatal Industrial Accidents per Annum in the United States and 260,000 Serious Injuries

late been adding peculiar new hazards to those previously involved in the handling of live animals. What these thousands of accidents, occurring in every industrial state and country, mean in terms of suffering, interrupted wage-earning, lowering of efficiency, and deterioration of standard of living, our compensation laws are at last beginning to reveal with something like scientific accuracy.

(2) *Occupational Diseases*

Hardly, if any, less serious, than the misery and waste caused by industrial accident is that entailed through the more insidious danger of occupational disease.

Occupational disease has been defined as "morbid results of occupational activity traceable to specific causes or labor conditions, and followed by more or less extended incapacity for work."[1] American interest in the subject is mainly a product of recent years. In 1910 it was possible to record only the appointment of the Illinois Occupational Disease Commission, the completion of an investigation of phosphorus poisoning in the match industry, and the holding of the First National Conference on Industrial Diseases, an expert committee of which drew up a memorial on the subject for presentation to the President of the United States. Practically all of the many interesting American investigations and reports on this subject have been made since that time.

The principal industrial health risks, as far as we now know them, may be conveniently classified according to their nature as follows: (1) Dangerous gases, acids, and dusts (poisonous and non-poisonous); (2) harmful bacteria and micro-organisms; (3) compressed or rarefied atmospheres; (4) improper lighting; (5) extremes of temperature and humidity; (6) excessive strain. Almost every calling involves danger from one or more of these.

Considering merely the industrial poisons, "those raw materials and products, by-products, and waste products which, in their extraction, manufacture, and use in industrial processes, notwithstanding the exercise of ordinary precaution,

[1] "Memorial on Occupational Diseases," *American Labor Legislation Review*, Vol. I, No. 1, January, 1911, pp. 125-143.

may find entrance into the body in such quantities as to endanger by their chemical action the health of the workman employed," we find already prepared a careful list of fifty-two,[1] one of which alone, lead, is in daily use in about 150 trades, causing "painters' colic," "wrist drop," or even death. Connected with dusty trades of all sorts, from silk-weaving to quarrying, are found non-poisonous dusts which by infiltration and mechanical irritation produce various occupational lung diseases. The bacillus of anthrax, moreover, may infect tanners and workers on hair goods, while ankylostomiasis, or "miners' hookworm," menaces those who toil in warmth and moisture underground. The tunnel and caisson worker dreads compressed-air illness. Less easy to trace, but perhaps even more widespread, are the obscure ailments which may arise in any industry, from insufficient or excessive lighting, from extremes of heat, cold, and humidity, or from work too heavy, too persistent, and too intense without adequate periods of rest.

Incomplete as is our information on the prevalence and seriousness of industrial accidents, even more incomplete is it with regard to specific trade maladies, some of which are now being recorded in our hospitals and dispensaries. The first American law for the compulsory reporting of these diseases was drafted by the Association for Labor Legislation after investigation of similar legislation in England and was enacted in California in March, 1911. Within five years, as the result of vigorous and sustained effort, sixteen states enacted similar legislation.[2] The earliest of these laws called for reports on all cases of anthrax, compressed-air illness, and poisoning from lead, phosphorus, arsenic, mercury, or their compounds,[3] to which were later added brass and wood alcohol poisoning.[4] The more recent tendency, however, is to make the laws in-

[1] United States Bureau of Labor Statistics, *Bulletin No. 306*, "Occupation Hazards and Diagnostic Signs," 1922.

[2] California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Wisconsin. The New Jersey occupational disease reporting law was repealed in 1920 but in 1924 certain diseases which were declared compensable under the workmen's compensation law became reportable to the compensation authorities.

[3] California, Laws 1911, C. 485.

[4] Connecticut, Laws 1913, C. 14; New York, Laws 1913, C. 145.

clude "any ailment or disease contracted as a result of the nature of the patient's employment," [1] in which form they will probably be productive of more important results.

The duty of reporting falls upon the physician, who may be either a general practitioner treating the case, or, in states requiring a monthly medical examination of workers in specially hazardous trades, the physician making such examination. A standard certificate has been adopted in a majority of the reporting states,[2] and requires the name and address of both employee and employer, the nature of the business, the diagnosis and symptoms of the disease, and other pertinent information. In most cases reports must be made to the state labor department, but occasionally they go to the board of health, which transmits them to the labor department. Reporting of occupational diseases has been further stimulated by their inclusion as compensable injuries in more than a dozen American compensation laws.[3] In a number of these laws only specified diseases are covered; but under some half dozen all occupational diseases clearly identifiable as such are compensable and disease reporting covers a wide field.

Reliable statistical data for the country as a whole are, however, still lacking. Again, we must fall back on estimates. Careful American authorities declared in 1910, on the basis of German experience, that numbering our gainfully occupied population at 33,500,000, no fewer than 284,000,000 days' illness occur annually, causing a social and economic waste of nearly $750,000,000.[4] Of this enormous waste fully one-quarter, it was computed, could be prevented by deliberate effort, largely in the direction of greater care and cleanliness in the nation's workshops. The engineers' committee on elimination of waste in industry estimated in 1921 that "the 42,000,000 men and women gainfully employed probably lose on an average more than eight days each annually from illness disabilities, including non-industrial accidents—a total of 350,000,000 days," and that "the economic loss from preventable disease and death is $1,800,000,000 among those classed as

[1] Massachusetts, Laws 1913, C. 813, Sec. 6.

[2] Like the standard accident schedule, this certificate was drafted after careful study by the Association for Labor Legislation.

[3] See chap. VIII, "Social Insurance."

[4] *Memorial on Occupational Diseases.*

gainfully employed—or over $700,000,000 among industrial workers in the more limited meaning of the term."[1] The report stated further that "there is experiential basis for the statement that this loss could be materially reduced and leave an economic balance in the working population alone over and above the cost of prevention of at least $1,000,000,000 a year." Many unhealthful conditions in industry, also, while they may not lead to actual absence from work, are nevertheless productive of unnecessary physical discomfort which reacts badly on the worker's health and strength. The effects of these daily minor drains upon industrial efficiency are necessarily difficult to trace or to measure, but they must in the aggregate be enormous.

2. Prohibition

The method of prohibition for the safeguarding of industrial workers is usually resorted to only under severe provocation. At times it appears to be the only effective way of removing an intolerable industrial hazard, and instances of its use are multiplying.

There are two ways in which the prohibitive method may be applied. First, it may be used to exclude from employment those most susceptible to danger, whether children, women, or certain classes of men. Second, it may be used to outlaw the substances or instruments which render employment dangerous.

(1) *Exclusion of Persons*

a. Children. Provisions for the exclusion of persons from industrial pursuits have been carried further with regard to children than with regard to any other group of wage-earners, on the general theory that the child is the special ward of the state and most in need of special measures of protection. The dangers thus sought to be guarded against may be to the child's life, limb, health, or morals,[2] and the restrictions

[1] Committee on Elimination of Waste in Industry of the Federated American Engineering Societies, *Waste in Industry*, 1921, p. 21.

[2] See, for instance, Massachusetts General Laws 1921, C. 149, Secs. 61-66.

which have grown up are based on considerations of age, physique, and education.

(*a*) *Age Requirements.* The past century has witnessed an almost complete reversal of public opinion as to the proper age at which children should become breadwinners. Without scruple, and even in the belief that they were acting charitably, the American colonists received from England as bound apprentices large numbers of orphans and children of the poor, ten to sixteen years of age, some even as young as seven years. Laws were passed to keep these boys and girls profitably employed, partly for the benefit of the community and partly to save them from the dangers of idleness. When manufactures arose Alexander Hamilton approved of them as rendering children "more useful and . . . more early useful than they would otherwise be."[1]

These colonial traditions have now gone down before a standard of working age based on the observed harmful effects of premature labor. In 1848[2] Pennsylvania forbade the employment in textile establishments of children under twelve, a standard which it the following year[3] raised to thirteen.

Within the next decade a twelve-year limit was established in Rhode Island,[4] and a ten-year limit in New Jersey[5] and Connecticut;[6] in all three states the law covered manufactures, and in Connecticut it covered mechanical establishments also. In none of these states was any proof of age required, and enforcement was everywhere very lax.

The first state to provide a special officer to see that its age restrictions on the employment of children were obeyed was Massachusetts, in its law of 1867.[7] The previous year, following a report by a commission on hours of labor, a law had been passed forbidding the employment of children under ten years of age in manufacturing establishments. The governor at his discretion might instruct the state constable and his deputies to enforce the law. It seems, however, that the

[1] Alexander Hamilton, *Works*, Vol. III, p. 207.
[2] Pennsylvania, Laws 1848, No. 227.
[3] *Ibid.*, Laws 1849, No. 415.
[4] Rhode Island, Laws 1853, p. 245.
[5] New Jersey, Laws 1851, p. 321.
[6] Connecticut, Laws 1856, C. 45.
[7] Massachusetts, Laws 1867, C. 285.

governor did not see fit to give such instructions, and in 1867, when the act was amended to cover mechanical establishments as well as manufacturing, it was made a duty of the state constable to detail a deputy to enforce all laws regulating the employment of children.

About this same period the national labor organizations became active in demanding the legal prohibition of child labor below a minimum age limit. In 1876 laws against the employment of children under fourteen years of age were advocated by the Working Men's Party at a congress in Philadelphia, and about the same time the Knights of Labor took a stand for the prohibition by law of their employment under fifteen years of age in workshops, mines, and factories. The American Federation of Labor, organized later, indorsed the same standard. Since then many influential societies and women's clubs, as well as labor organizations, have supported and worked for the legal prohibition of child labor. In 1904 the National Child Labor Committee was formed to act as a clearing house for information on child labor, to investigate conditions, to educate public opinion, and to promote legislation.

The result of the work of this national committee and the various agencies that have cooperated with it is a large body of legislation restricting the employment of children. All states now forbid the employment of children in one or more kinds of work until they have passed a fixed age limit. The fourteen-year minimum age limit was by 1926 established for general factory work in all the states except Utah,[1] but in four [2] the restriction applied only to work during school hours, and in four [3] children could be exempted because of poverty. In most states documentary proof of a child's age is demanded, and working permits or employment certificates must be obtained by the children and placed on file in the establishment before they can be employed therein.

The age limit in some of the earliest child labor laws applied

[1] Utah excludes children under sixteen from certain specially dangerous manufacturing processes.

[2] Missouri, Nevada, New Mexico, and Wyoming. In addition many other states permitted work outside of school hours in specified cases. (See chart on *State Child Labor Standards*, January 1, 1926, prepared by the Children's Bureau, United States Department of Labor.)

[3] Delaware, South Dakota, Washington, Wyoming.

only to cotton and woolen factories and to a few other special industries where the evils of child labor were supposed to be most flagrant. In other laws the prohibition was general for all work in "manufacturing or mechanical establishments." It is only in comparatively recent years that the minimum age limit for employment has been applied in the majority of states to mercantile establishments and other places of employment as well as to factories. In most states by 1926 children under fourteen years of age were excluded from employment in a list of establishments including—in addition to factories, mills, workshops, and stores—certain other places, such as hotels, restaurants, laundries, bowling-alleys, and theaters, where conditions appeared to warrant such exclusion.[1]

Nevertheless, most of the state laws are defective in that they fail to cover all the occupations from which children should be excluded. In fact, the rapidly changing industrial conditions render it practically impossible to draw up a list of occupations that will be complete for any length of time, even though it is complete at the time the law is enacted. The tendency of those who are experienced in drafting child labor laws now is to use the general term "in any gainful occupation," instead of a specified list. Agriculture and domestic service are, however, frequently exempted from this general prohibition.

The fact that so much progress has been made in the last decade in the enactment of child labor legislation, and that the fourteen-year limit has been so generally established, especially for factory work, does not mean that premature employment of children is eradicated. There is serious danger that since the most sensational stages in the fight against child labor have passed, public opinion will become apathetic and not perceive the inadequacies of laws that may have at one time been a great step in advance. Unfortunately, most of the laws bear the scars of conflicts with shortsighted legislators as well as with powerful interests who either looked upon the employment of children as necessary to their prosperity or

[1] There is great variety in the scope of these laws and the exceptions thereto. For details see chart on *State Child Labor Standards,* January 1, 1926, prepared by the Children's Bureau of the United States Department of Labor.

considered prohibitive legislation an encroachment on their business rights. Exemptions—chief of which has been the exemption of the "poor widow's" child and children of "dependent parents," a relic of the days of the Elizabethan poor law—have been the curse of child labor laws.

Recognizing that securing and perfecting protective legislation state by state was likely to be a tedious process which would result at best in undesirable diversity of standards, opponents of child labor turned in the past decade to federal action. Accordingly, in 1916 Congress enacted a measure which forbade the transportation in interstate commerce of the products of factories in which children under fourteen had been employed, or in which children between fourteen and sixteen had worked more than eight hours a day or six days a week or at night. The same prohibition was applied to products of mines employing children under sixteen.[1]

One day before the act was to have gone into effect a permanent injunction was secured restraining its enforcement in a North Carolina court district. The person who sued out the injunction was a poor cotton-mill operative who asked not to be deprived of the wages of his two boys. He was represented, however, by counsel from New York and from two North Carolina cities, and the strongest opposition to the measure while before Congress had come from Southern mill-owners. The United States Supreme Court, to which the matter was appealed, held the law unconstitutional as an undue extension of the power to regulate interstate commerce.[2]

Undeterred by this reverse, the friends of child labor restriction continued their efforts. In 1919 Congress again enacted the protective standards which had been temporarily overthrown two years earlier. Instead of seeking authority through the power to regulate interstate commerce, the act was this time based on the taxing power. That is, a prohibitive tax of 10 per cent was levied on the annual net profits of any concern which employed children in violation of the standards named. As the "power to tax" had repeatedly been held to include the "power to destroy," it appeared probable that the court would uphold the new act. In so doing it would merely

[1] United States, C. 432, Sixty-fourth Congress, First Session.
[2] Hammer *v.* Dagenhart, 247 U. S. 251, 38 Sup. Ct. 529 (1918).

have sanctioned the same method for protecting children against premature or excessive labor that has already been upheld for protecting bankers against undue inflation of the currency, dairy farmers against attractively colored oleomargarine, and workers in the match industry against phosphorus poisoning.[1] However, the same North Carolina federal district judge who enjoined the enforcement of the earlier statute declared the second measure also unconstitutional, and in May, 1922, the United States Supreme Court upheld this decision.[2] The court argued that, though a tax law in form, the act was clearly regulatory in purpose and that Congress could not thus extend its powers into the field of social legislation. By these two decisions the court effectively blocked the use—for the protection of the country's children—of either of the two traditional sources of the federal police power.

But the problem still remained. The 1920 census showed more than a million[3] children between the ages of ten and fifteen gainfully employed in the United States; yet this census was taken in the winter months when agricultural employment of children was at the lowest figure. Moreover, it represents conditions during the period when the second federal child labor law was in force. Available data indicate that the employment of children increased markedly after this law was invalidated.[4] The United States Children's Bureau reported in 1924 that only eighteen states measured up to the relatively conservative standards of the recent federal laws in regard to work in factories, canneries, mills, and workshops, and that only thirteen states measured up to these standards in all respects.[5] The need for federal action was still apparent and the only remaining approach appeared to be through amendment of the

[1] See "Child Labor and the Constitution," by Thomas J. Parkinson, *American Labor Legislation Review*, June, 1922, pp. 110-113.

[2] Bailey *v.* Drexel Furniture Company, 259 U. S. 20, 42 Sup. Ct. 449 (1922).

[3] United States Department of Labor, Children's Bureau, *Publication No. 114, Child Labor in the United States*, 1924, p. 5.

[4] Testimony of Miss Grace Abbott, Chief of the Children's Bureau, United States Department of Labor, at the hearings on the proposed child labor constitutional amendment before the House Judiciary Committee, Sixty-eighth Congress, First Session, February and March, 1924. See especially pp. 37-39.

[5] *Ibid.*, p. 18.

federal constitution. A constitutional amendment permitting Congress to prohibit and regulate the labor of children under eighteen years of age was accordingly prepared and urged by the supporters of child labor legislation and was passed by Congress in 1924. To become effective this amendment must be ratified by three-fourths of the states; but by February, 1926, only four states[1] had given their assent.[2]

But even in the absence of federal legislation the country is fast approaching the basic standard of a draft convention adopted by the first International Labor Conference in October, 1919, prohibiting the employment of children under fourteen years of age in industrial undertakings.[3] By January, 1926, this convention had been ratified by eleven countries.[4]

In addition to the minimum age of fourteen for entrance to general factory work, many American states set a limit of sixteen years for certain more dangerous processes, and in some states an additional two years' maturity is required for entrance to a number of extra hazardous occupations.[5] The first group of occupations may include such employments as the cleaning and oiling of machinery, the adjusting of belts, the operation of machine saws or of stamping, washing, grinding, and mixing machines, and the manufacture of lead products or of compositions containing poisonous acids; while in the second group is work in mines, at blast furnaces, or on railroads, in the outside erection of electric wires, or in the manufacture of explosives. Some states have established minimum limits as high as eighteen or even twenty-one for night messenger service or other morally dangerous work. A growing tendency is manifest to give to state boards of health or state labor de-

[1] Arkansas, Arizona, California, and Wisconsin.

[2] For material describing the methods employed by the opponents of the amendment in defeating ratification measures in other states see *American Labor Legislation Review,* December, 1924, pp. 320-321.

[3] Conventions dealing with minimum age for employment at sea, in agriculture, and in trimming and stoking were adopted at the second and third International Labor Conferences.

[4] See chart on *Progress of Ratifications,* published by International Labor Office, January, 1926.

[5] See *Legal Regulation of the Employment of Minors Sixteen Years of Age and Over,* United States Department of Labor, Children's Bureau, leaflet.

partments power to add to the lists of dangerous and extra hazardous employments.[1]

Age restrictions for entrance to dangerous occupations have been repeatedly upheld as a valid exercise of the police power,[2] and the provision empowering health authorities and others to extend the lists of prohibited occupations for children of certain ages has been held not to be an unwarranted delegation of legislative authority.[3] In some states illegal employment of a child deprives the employer of the defenses of assumption of risk[4] and contributory negligence[5] in case of a damage suit for accidental injury. A few states, in an effort to secure adequate redress for the injured child and at the same time to help enforce the child labor laws, have provided in their workmen's compensation laws that in case a minor is injured while illegally employed his compensation award shall be double or triple the normal amount.[6]

All the important countries of Europe possess similar graduated restrictions upon engaging in remunerative employment at too extreme youth, and the principle of adding to the lists of prohibited occupations by administrative authorities is well established. Frequently, also, the authorities are permitted to allow exemptions from the application of the laws.[7]

A serious shortcoming of most of our child labor laws is their failure to deal adequately with child labor on city streets. We have more or less thoroughly prohibited the premature employment of children in factories, stores, and other places, but have inconsistently allowed boys and girls of tender years to be exposed to perhaps a worse moral and physical environment in

[1] As in Massachusetts, Laws 1913, C. 831, Secs. 4, 6.
[2] Lenahan *v.* Pittston Coal Mining Co., 218 Pa. 311, 67 Atl. 642 (1907).
[3] Louisville, Henderson & St. Louis R. Co. *v.* Lyons, 155 Ky. 396, 159 S. W. 971 (1913).
[4] Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755 (1905).
[5] Strafford *v.* Republic Iron & Steel Co., 238 Ill. 371, 87 N. E. 358 (1909).
[6] For discussion of such legislation see "Treble Compensation for Injured Children," by E. E. Witte; *American Labor Legislation Review*, June, 1923, pp. 123-129. Since the appearance of this article, New York and New Jersey have allowed double compensation in these cases and certain details of the Wisconsin scheme have been amended.
[7] For extended discussions of this matter see *Bulletins Nos. 80* and *89* of the United States Bureau of Labor, on "Woman and Child Wage-earners in Great Britain" and "Child Labor Legislation in Europe," respectively.

vending newspapers, gums, and other articles on the streets, without sufficient regulation. In 1926 only one or two states, as, for example, Kentucky, had the same age limit, fourteen years, for all street trades as for other employment. Several states have a fourteen-year limit for bootblacking and peddling, and a twelve-year limit for newsboys. So far only about half the states[1] have passed laws regulating the employment of children in street trades, and in these the prevailing age limit for newsboys is twelve years. Because of the additional moral danger to girls, the age limit for them is usually four or six years higher than for boys.

Suggestions frequently have been made that a uniform age limit for all regular gainful occupations is not scientific, as some children are more mature and fit to work at thirteen years of age than others are at fifteen. No practical method has yet been found, however, of determining the physiological age of children, and the age limit will probably always prove the most satisfactory standard. The purpose of the minimum age is to prevent improper toil before the child has passed the most formative period of adolescence, and also to give the child a chance for a necessary minimum of education. Recent scientific studies of the physical effects of modern industry on children, and recent investigations[2] of the educational needs of children in industry, indicate that the fourteen-year limit is not adequate in either of the above respects. There is a strong tendency in the more advanced states to eliminate all children under sixteen from industry. Ohio has had for several years a fifteen-year limit for boys and a sixteen-year limit for girls. In 1921 the limit was raised to sixteen for boys. Montana also has a sixteen-year age limit which does not, however,

[1] By the beginning of 1926, legislation on this subject was found in Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Porto Rico, Rhode Island, Utah, Virginia, Wisconsin. In Nevada the law merely makes children in street employment subject to the control of the juvenile courts. The North Carolina standard is fixed by a ruling of the State Welfare Commission.

[2] See, for instance, *Child Labor Bulletin*, Vol. I, No. 1, "Child Labor and Education"; United States Bureau of Education, *Bulletin 1913, No. 19*, "German Industrial Education and Its Lesson for the United States," Holmes Beckwith; *Seattle Children in School and in Industry*, published in 1915 by the Seattle, Wash., Board of School Directors.

apply to work in stores. In 1915 a law with a fifteen-year minimum age limit for work during school hours was passed in Michigan, chiefly through the efforts of the Employers' Association of Detroit. By 1926, California had a similar limit for children who had not completed elementary school; while Maine and Texas had fifteen-year age limits which exempted work in stores, the Maine statute, moreover, applying only to work during school hours. Industries of the best type are finding that children under sixteen do not pay. Organized labor, also, has taken a determined stand for the sixteen-year minimum age during the months in which the public schools are in session, and for a sixteen-year compulsory education limit. Educators are generally accepting this as the standard that must eventually be adopted, with the additional requirement of day continuation school classes for employed children under eighteen who have not completed high school.[1]

(*b*) *Physical Requirements.* While it may be impracticable to substitute a physiological for the ordinary chronological age test, it is nevertheless true that physical development as well as age should determine the child's eligibility for employment. So far state laws have not designated any standard physical requirements, but have merely contained the rather meaningless provision that children must be physically fit. At the beginning of 1926, a physical examination of all applicants for certificates was required by more than twenty states.[2] In several other states the official granting employment certificates is authorized to ask for the physical examination of the applicant if he considers him of doubtful health and strength.

Because of the lack of definite standards these examinations depend for their value almost entirely on the physician who happens to make them. In New York City, for instance, the physical examination of applicants for certificates is well stand-

[1] See, for example, Minimum Standards for Children Entering Employment, adopted by the Washington and Regional Conferences on Child Welfare called by the United States Children's Bureau (United States Department of Labor, Children's Bureau, *Publication No. 114*, pp. 32-33).

[2] Alabama, Arizona, California, Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin (Milwaukee only). The Massachusetts act (Laws 1906, C. 502) was the first of this type.

ardized. Blanks are used in the examination of each child which include not only the height and weight, but a test of the eyesight and hearing, and an examination of the condition of the teeth, the heart, the lungs, throat, and nostrils, and the general physical condition. The same blanks are used throughout the state, but in smaller towns they are usually very poorly filled out.

If the physical examination is to be a real test of the child's fitness, the medical examiner must know the prospective place of employment and have a knowledge of the conditions and processes in the various industries in which children are employed. Under the English law, accordingly, the certifying physician must examine the child in the factory where he is entering employment, and if the child changes employment he must be reexamined in the same manner.[1] Wherever medical examination of children in the public schools is extensively developed, the records of the child's physical progress should be kept in such form that they may be compared with the examination at the time the child proposes to leave school. In smaller cities the simplest arrangement is for the school medical examiner to make the examinations of children applying for certificates. Whether school or health authorities are responsible for these examinations, it is desirable that the number of authorized examiners be small in order that uniform standards may be applied and that the examining physicians may acquire familiarity with the specialized industrial problems. It is also essential that some sort of state supervision be exercised.[2]

A single examination at the time of application for employment certificates, however, even when it has been put on a more scientific basis than at present, will not be sufficient protection for the health of working children. In order that children may not be injured by the work they do, examinations must be repeated periodically.

Theoretically, reexamination is automatically brought about in those states which require a new employment certificate or a

[1] Factory and Workshop Act, 1901 (1 Edw. 7, C. 22, Sec. 64 (3)).

[2] For discussion of this problem see "Standards Applicable to the Administration of Employment Certificate Systems," by Helen Sumner Woodbury, United States Department of Labor, Children's Bureau, *Publication No. 133*, 1924, pp. 74-97.

personal renewal of the certificate with every change of employment. In practice, however, the procedure for reissuance of certificates to children who were once employed is frequently most perfunctory. A few states give children additional health protection by empowering child-labor-law-enforcing officials to require physical examination of employed children who appear physically unfit for their work, and to revoke employment certificates when necessary. In New York a medical inspector from the labor department selects the children who appear to need examination. But even a physician cannot detect all forms of serious disability by the mere appearance of the patient. All working children—if they are to be adequately protected and removed from occupations which are affecting them injuriously—should be regularly examined at least once a year.[1] By 1926 only one state, Virginia, required annual physical examination of all children holding employment certificates. Similar provisions will probably be embodied in the laws of other states as public opinion gradually comes to realize the necessity of safeguarding the child's health after he has entered industry in the same way as is now being done to a large extent up to the time that he leaves school.

(*c*) *Educational Requirements.* Merely to compel the child to go to school until it is fourteen or sixteen years of age does not guarantee the attainment of any definite minimum of education. Hence most states forbid the employment of children who do not come up to certain standards of knowledge. These standards, however, vary considerably. About half a dozen states require only that applicants for employment certificates be able to read and write English or show proficiency in certain other specified subjects. Many states require the attainment of certain grades in the public schools, or equivalent instruction. Completion of the eighth grade was by the beginning of 1926 the standard in about a dozen states.[2] In January, 1926, the

[1] See "Physical Standards for Working Children," preliminary report of the committee appointed by the Children's Bureau of the United States Department of Labor to formulate standards of normal development and sound health for the use of physicians in examining children entering employment and children at work. United States Department of Labor, Children's Bureau, *Publication No. 79*, 1921, p. 11.

[2] For details of these requirements see United States Department of Labor, Children's Bureau, *Chart No. 2*, "State Child Labor Standards," January 1, 1926.

laws of nine states fixed no educational tests whatever for employment of children fourteen years of age or older.[1]

Several states require attendance at school for a minimum period either during the year previous to the birthday at which the child becomes old enough to go to work, or during the year previous to the time the certificate is issued. This required period of attendance may vary from the entire school year to twelve weeks or less. Instruction in certain specified subjects, usually reading, writing, spelling, geography, and arithmetic through common fractions, is required in some states.

The provision that children who have been granted "working papers" but are under sixteen years of age shall attend school when not regularly employed is common, but little attention has been paid to its enforcement. Once an employment certificate has been secured, the child is usually forgotten by the school authorities. Even when the law requires that the certificate be sent direct to the employer and returned by him to the issuing office when the child's employment terminates, the certificate at no time becoming the property of the child, enforcement is often lax. Some of this difficulty is due to delay on the part of employers in reporting to certificating officials, or on the part of these officials in reporting to the school attendance departments. Frequently, it is due also to the belief of the school authorities that the child will profit little by the interrupted work and will act as a drag on those in regular attendance. Continuation schools, now operating in more than half the states for the part-time education of employed minors, are better adapted than the full-time schools to the handling of these irregular pupils. A few states, therefore, require that continuation school attendance, which is normally four to eight hours a week for employed minors under sixteen or eighteen years of age, shall be extended to twenty hours a week for those temporarily unemployed. These newer provisions should prove more nearly possible of strict enforcement. In 1926, however, continuation schools existed, for the most part, only in the more populous communities.

[1] Louisiana, Mississippi, Missouri, Nevada, New Mexico, North Carolina, South Carolina, Virginia, Wyoming. (North Carolina, however, permitted her Child Welfare Commission to prescribe conditions for issuance of employment certificates.)

Much of the time of the child under sixteen who drifts from one dull, monotonous job to another is wasted, as far as education and training are concerned. Consequently, the completion of the eighth grade seems little enough schooling to require of children who go to work under sixteen and the continuation of part-time education during the first years of employment is most desirable.

(*d*) *Special Problems in Enforcing Restrictions on Child Labor.* Difficult as it has been, and still is, to place comprehensive child labor laws on the statute books, it is even more difficult to build up their effective administration.

The principal agencies for the enforcement of child labor laws are the departments of labor, the school authorities, and in some states child welfare commissions. Probation officers and private child welfare agencies may sometimes aid. In some states special child labor inspectors are appointed; in fact, factory inspection has usually begun with the enforcement of the child labor law before other labor legislation was established. In most cases, however, enforcement rests primarily with the factory inspection organizations.

Few, if any, states have an adequate corps of inspectors,[1] and in many of the Southern states the provision for enforcement is most meager.[2] The experience of state after state has demonstrated that without official inspection child labor laws are dead letters.

The issuance of employment certificates is the first step in the administration of the minimum standards for entrance to industry. In most states where certificates are required they are issued by the local school authorities. In a very few states no employment certificates are required, the affidavit of the parent being accepted as proof of age.[3]

[1] See chap. IX, "Administration," p. 496.

[2] In Georgia, for example, when the United States Children's Bureau investigated thirty-nine representative mills in November and December, 1922, it discovered 140 cases in which the *state* child labor law was violated, instances occurring in all but seventeen of the plants. Florida, Georgia, and Mississippi had, in 1925, only one inspector each to enforce their child labor laws.

[3] By January, 1926, Mississippi and Idaho were the only states with no employment certificate requirements. Wyoming, however, required certificates only for certain dangerous occupations and Texas only for children between the ages of twelve and fifteen exempted from the regular restrictions because of poverty.

Under the prevailing method of issuance through the school authorities there is an attempt to secure uniformity by the use of standard blanks throughout the state, by regular monthly or more frequent reports either to the commissioner of labor or to the state superintendent of education, and by a certain amount of centralized supervision on the part of these officials. It is argued that this method is the most practical because the school office is the most convenient place for the children and their parents to go to obtain the certificates; because the local school authority knows the child through his record or through personal contact, and thus there is less likely to be falsification in regard to age; and because the local school authority is likely to be much more interested in keeping the child in school and will make more of an effort to point out the inadvisability of allowing it to leave for some temporary and unnecessary employment. The enforcement of the compulsory education law, also, is so closely connected with the enforcement of the child labor law that the two should be coordinated under the school authorities in each community. The same sets of records are necessary for the issuance of certificates and for the enforcement of the compulsory education law. The school census, the record of the child's age on entering school, and its progress in school are equally important to the enforcement of both laws. Experience, however, reveals the danger that dependence on local school authorities may result in the creation of a large number of issuing officers whose respective jurisdiction may not be clearly distinguished, whose interpretation of the complex provisions of these laws may differ in many details, whose time may be so largely devoted to other school matters that the technical problems of certificating will not receive the proper study and attention, and whose very numbers make impossible effective cooperation with other child-labor-law-enforcing officials or effective supervision by the state authorities. A small number of full-time, well-trained certificating officers make for a better administered system.[1] In a few states such officers are appointed by the state de-

[1] For discussion of this problem see "Standards Applicable to the Administration of Employment Certificate Systems," by Helen Sumner Woodbury, United States Department of Labor, Children's Bureau, *Publication No. 133*, pp. 18-44.

partment finally responsible for enforcement of child labor laws. The certificate-issuing officers, no matter how chosen, should be required to report promptly to the school attendance officials all applicants who have been refused certificates in order that they may be returned to school. School principals, as well as inspection officials, should also be notified of the names of all children to whom certificates have been granted. In the regulation of children's work in street trades, badges to be worn conspicuously and renewed annually have been found essential to enforcement, and the responsibility for administration rests chiefly with the educational authorities.

Cooperation between the child labor inspectors and the schools is necessary that both may discharge their responsibility to the best advantage of the child. A careful issuance of employment certificates and a thorough enforcement of the compulsory education law make the work of the labor inspector much easier. It is desirable, furthermore, that truant officers have the power to inspect establishments where children are employed, and they should be the local representatives of the state child labor inspectors, reporting to them all violations and aiding them in getting evidence to bring prosecutions. The actual presentation of evidence in the courts should always be done by the state inspector, who is more likely to be free from local pressure.

The important provisions of what is in most respects a model law in regard to employment certificates are as follows;[1] No child under sixteen should be engaged unless the child presents to the employer an employment certificate, which should be kept on file during the child's employment and returned to the issuing officer when the employment terminates. These certificates should be issued only by the local superintendent of schools, or by some one designated by him in writing, and should be given only after the following documents have been received and placed on file:

(1) The pledge of the employer that he expects to employ the child and will return the certificate to the issuing office as soon as the child leaves his employ.

(2) The child's school record, stating the age, ability to

[1] Practically the provisions of the Ohio Law (General Code, 1910, Secs. 7765-7771).

read and write, and school grade, signed by the principal of the school that the child last attended.

(3) Evidence of age, in the following order: (*a*) birth certificate; (*b*) baptismal record or passport; (*c*) school record or other documentary evidence; (*d*) in the absence of anything else, affidavit of the parent, with one or two disinterested citizens. The child should personally appear before the issuing officer for examination, and the officer should satisfy himself that the child is at least fourteen years of age, is able to read and write English, and has had a course of instruction equivalent to seven yearly grades in the public schools.

(4) A certificate from the school physician, board of health, or a licensed physician appointed by the board of education, in the order named, showing that the child is physically able to do the work for which it is to be employed.

The certificate should be transmitted by the issuing officer to the employer, and should not at any time come into possession of the child, to be used as a license for idleness. The blanks should be furnished by the state commissioner of labor, to whom should be sent monthly a list of the names of children for whom certificates have been issued, returned, or refused. Such lists should give the names and addresses of the prospective employers and the nature of the occupations in which the children intend to engage. Factory inspectors and truant officers should be empowered to demand that certificates be obtained to prove the age of children apparently under sixteen who claim to be over that age.

Even more for the sake of uniformity in enforcement than for uniformity in restrictions on child labor, federal legislation is needed. Experience under the federal child labor laws before their invalidation by the courts indicates that state inspectors cooperated willingly with the federal authorities and that the state officials found their own work greatly facilitated by the existence of the federal standards.[1] Advocates of federal legislation believe, also, that the federal courts are more likely to find against a man who violates a federal law regard-

[1] Testimony of Miss Grace Abbott, Chief of the United States Children's Bureau, United States Department of Labor, at the hearings on the proposed child labor constitutional amendment before the House Judiciary Committee, Sixty-eighth Congress, First Session, February and March, 1924. See especially pp. 41 and 46-51.

ing the employment of children than the local courts are to convict for violation of state laws. This would be an important gain, because it is not at all an uncommon thing for the state factory inspector to have a case dismissed by the judge after the most careful evidence has been presented, merely because the judge does not see that any great injustice has been done the individual child.

For the better enforcement of child labor laws cooperation between all the different agencies that are interested is essential. The standards which have been and will be established in regard to the entrance of children into industry will never be thoroughly enforced until the problem of administration is taken up with the same enthusiasm and persistence which have marked the campaigns for legislation.

b. Women. The exclusion of women from various branches of industry is based primarily on their inherently weaker resistance to certain health dangers, and sometimes upon moral grounds or upon their special need for protection at certain periods, as just before and after childbirth. Legislation to this end is much less extensively developed in America than in Europe.

(*a*) *Prohibited Employments.* In America the most usual laws forbidding the employment of women in designated occupations or under designated conditions relate to work in mines and saloons. Work in mines is forbidden to women in most of the mining states,[1] and work in saloons has long been tabooed in many states, but in neither of those occupations has the problem of female labor been as serious as it is in England and in some other European countries where such employment has been common rather than exceptional. In addition, a few scattered provisions of various sorts are found. Two or three states have forbidden the employment of women in cleaning moving machinery.[2] Arizona forbids the work of women "in any capacity" in which they must remain standing constantly,[3] and New York, in a law containing important exceptions, and Ohio forbid women to operate certain kinds of emery and other

[1] Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, Maryland, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Utah, Virginia, Washington, Wisconsin, Wyoming.

[2] Louisiana, Minnesota, Missouri, West Virginia.

[3] Arizona, Revised Statutes 1913, Sec. 3115.

polishing wheels.[1] New York also forbids the employment of women coremakers in foundries if the cores are baked in the room where they are made,[2] and Minnesota prohibits women from lifting cores in and out of ovens.[3] Several states[4] exclude women from work involving repeated lifting of heavy weights. Ohio and Wisconsin were, in 1926, the only states with extensive provisions for the exclusion of adult women from dangerous occupations. Ohio prohibited their employment not only in the occupations specified above but also in quarries, blast furnaces, smelters, shoe-shining establishments, bowling alleys, pool rooms, delivery services, freight elevators, baggage or freight handling, and trucking.[5] Wisconsin prohibited the employment of women in any occupation prejudicial to their life, health, safety or welfare, and directed its industrial commission to classify employments and to issue orders embodying the specific exclusions.[6]

In Europe the evil effects of certain kinds of work are much better known than in this country, and it is well recognized that even the most careful regulation of working conditions in these occupations would not suffice to prevent injury to the health of women employed therein. Accordingly, European legislation forbids the work of women in a fairly wide list of occupations, most of which involve the presence of dusts, fumes, vapors, gases, or substances of a poisonous or clearly harmful character. Among women workers in white lead, for instance, it was discovered that a serious derangement of the reproductive organs frequently occurred, and that the percentage of miscarriages and stillbirths among married women was exceedingly high. Therefore, in most of the important European countries, and also in Argentina, India, and Japan, women are forbidden to work in many of the dangerous processes in which this poison is used. The International Labor Conference of 1919 recommended the exclusion of women, as

[1] New York, Laws 1913, C. 464 (as amended by Laws 1921, C. 642); Ohio, General Code 1910, Sec. 1027; 15 (as amended by Laws 1911, p. 428).
[2] New York, Laws 1913, C. 464.
[3] Minnesota, Acts 1919, C. 84.
[4] California, Massachusetts, Minnesota, Ohio, by the beginning of 1926.
[5] Ohio, Laws 1919, p. 540.
[6] Wisconsin Statutes 1923, Sec. 103.05 (2).

well as of children under eighteen, from work in a number of dangerous lead trades. This recommendation, by March, 1926, had been officially accepted by Austria, Germany, Great Britain, India, Netherlands, Poland, Switzerland, and Japan.[1] In France females are forbidden ever to enter a place in which any one of forty-six especially dangerous processes is carried on, and nearly one hundred additional occupations are forbidden except under special protective conditions. Similar lists are found in the more important European countries, and even Spain, long backward in social legislation, has forbidden the employment of women and minor children in a long list of occupations. While it is true that women in foreign countries often engage in work done only by men in this country, yet many women are undoubtedly at work here in industries so dangerous to their health that an extension of prohibitory legislation is urgently needed.

(*b*) *Childbirth Protection.* It was not until 1911 that the prohibition of the industrial employment of women for a stated period before and after childbirth became the subject of legislation in America. Such statutes were passed by Massachusetts in 1911, New York in 1912, Connecticut and Vermont in 1913, Missouri in 1919, and the Philippine Islands in 1923. The Massachusetts act is a representative one. It forbids "knowingly" employing any woman in "a manufacturing, mechanical, or mercantile establishment" within two weeks before or four weeks after childbirth.[2]

The desirability of such additional protection for workingwomen at the time of childbirth has been recognized by most European countries and by several outside of Europe. The prohibited period is generally similar to that found in America, from two to four weeks before and from four to six or eight weeks after confinement. The International Labor Conference in 1919 drew up a draft convention prohibiting industrial employment of women for six weeks after childbirth, and permitting them to leave work, if they wished to, six weeks before

[1] See "Note Upon Measures Taken to Give Effect to the Draft Conventions and Recommendations Adopted by the International Labor Conference," *Official Bulletin of the International Labor Office,* Vol. IX, No. 1, and subsequent information in Vols. IX, X, and XI.

[2] Massachusetts, Laws 1911, C. C. 229.

confinement. By January, 1926, Bulgaria, Chile, Greece, Roumania, and Spain had ratified this convention.[1] The Third International Labor Conference at Geneva in 1921 recommended a similar standard for women in agricultural employments. European laws are rendered more effective than the American by their frequent connection with provisions for maternity insurance.[2] For instance, under the German system of health insurance, a woman worker is paid benefits of half-wages for four weeks before and six weeks following confinement. Such insurance is needed partly to make up for the income loss during the enforced period of idleness, and may also be an important aid in the enforcement of the law.

c. Men. Legal regulations for the exclusion of men from dangerous employments are never of universal application, as they are in the case of children and women, but are limited to certain classes or groups of individuals who must be excluded on definite grounds, usually ascertained by examination. The grounds of exclusion may be either physical or technical. Although the distinction does not always hold, physical requirements are in the main intended to protect the worker who is debarred, while in the case of technical qualifications the protection of fellow workmen or of the general public is an added if not the main consideration. Physical qualifications, also, are usually concerned with health; technical qualifications with safety.

(*a*) *Physical Qualifications.* Physical qualifications established by law are of four kinds: (1) reasonable immunity from the trade malady characteristic of the employment; (2) freedom from a trade malady contracted in the course of employment; (3) freedom from a contagious disease which might be passed on to other workmen or to consumers of the product; and (4) freedom from physical defect of such nature as to interfere with the proper performance of duty. It will be noted that the first two qualifications look toward the health of the workman himself, and that the last two look mainly toward the health and safety of other persons.

[1] See chart on *Progress of Ratifications* published by the Inte national Labor Office, January, 1926.

[2] See "Maternity Insurance," p. 464.

The qualification of immunity from a particular occupational disease was found in 1926 in only four American states, but is more common abroad. The New York,[1] New Jersey,[2] and Pennsylvania[3] statutes and the Massachusetts administrative order regulating work in compressed air require that applicants must be found physically qualified by a physician paid by the employer, and these laws also exclude persons addicted to the excessive use of intoxicants. In Europe examinations for entrance to compressed-air work are required in Belgium, France, Germany, Holland, and the Serb-Croat-Slovene Kingdom; several countries specifying a long list of ailments, such as obesity, heart or lung diseases, and affections of the nose and ears, any one of which debars from the work. Austria and the Serb-Croat-Slovene Kingdom bar from certain classes of work in paper-mills all workers with open wounds, persons with delicate respiratory organs, and consumptives. Still more common is the requirement of a medical certificate of fitness as a condition of entering the more dangerous lead trades, which is found in Austria, France, Germany, Great Britain, Russia, and the Serb-Croat-Slovene Kingdom. Germany specifically prohibits the employment in these trades of applicants with lung, kidney, or stomach trouble, a generally weak constitution, or an addiction to alcohol; France, of those who exhibit symptons of lead poisoning or of any complaint likely to be dangerously aggravated by plumbism. Belgium also forbids the employment of alcoholics in the white lead, lead oxide, or lead paint trades. Russia, in 1922, empowered her Labor Commissariat to require physical examination of applicants for work in any trade dangerous to health, thus carrying to its logical conclusion the principle embodied in all of these laws.

It is obvious, however, that merely debarring from entrance to an unhealthy trade those demonstrably susceptible to its dangers is insufficient protection. The worker's real power of resistance to a specific hazard often cannot be determined until he has been exposed to it, and if he begins to show symptoms of succumbing he cannot be too quickly removed. Hence

[1] New York, Laws 1909, C. 291, amended by Laws 1925, C. 123.
[2] New Jersey, Laws 1914, C. 121.
[3] Pennsylvania, Laws 1917, No. 364.

arises the necessity for the second qualification, freedom from a trade malady contracted in the course of employment.

Most common occupational diseases are of such slow inception that a capable physician can detect them in the early stages before their cumulative effects have become serious. To make sure, therefore, that the originally healthy employee is in fact successfully resisting the risk with which he is surrounded, the initial examination, when it is given, must be supplemented by periodical reexaminations at intervals graduated according to the degree of risk. Sometimes periodic examinations are required even when there are no restrictions upon entrance to the trade.

Such is the case with the monthly examinations required under the "lead laws" of the important lead-using states. The Ohio[1] and Pennsylvania[2] laws apply to the manufacture of certain of the more poisonous lead salts, such as white lead, red lead, and arsenate of lead (Paris green), while the later New Jersey[3] statute covers also the manufacture of pottery, tiles, or porcelain-enameled sanitary ware in so far as lead is used.

In all three of these states the physician who discovers a case of lead poisoning must report it not only to the state departments of labor and of health, but also to the employer, who after five days must not continue the "leaded" employee in a dangerous process nor return him thereto without a physician's written permit.[4]

Provision for regular reexamination is also found in the three American compressed-air laws already mentioned. Under these the examination must be repeated after the first half-day's work, on returning to work after ten days' absence from any cause, and after three months' continuous employment, and workmen who have ceased to be qualified must be excluded.

In the more dangerous lead trades workers are subject to regular examination in nearly all European countries, as well as

[1] Ohio, Laws 1913, p. 819, as amended by Laws 1921, p. 181.
[2] Pennsylvania, Laws 1913, No. 851.
[3] New Jersey, Laws 1914, C. 162.
[4] Similar laws in Illinois (Laws 1911, p. 330, as amended by Laws 1923, p. 351) and Missouri (Laws 1913, p. 402) cover wider ranges of related industries, including zinc smelting and work with arsenic, brass, mercury, and phosphorus, but do not require the removal from danger of workmen who show symptoms of the resultant diseases.

in India and Western Australia. England and Germany, moreover, require examinations both in alkali chrome works, where corrosions of the mucous membrane are common, and in rubber vulcanizing works, where there is danger from the noxious gas bisulphide of carbon. Belgium, France, Germany, and the Serb-Croat-Slovene Kingdom require similar examinations in compressed-air work. The frequency of examination varies from once a week in the British white lead industry, to every six months among German painters, although once a month, as in the American lead trades, is the most usual period. In the Netherlands stone masons are entitled to medical examination at the employer's expense once a year. In Russia the Labor Commissariat may require periodic physical examinations in any trade dangerous to health. In order that the advantages of cumulative experience may not be lost, a factory record of the results of medical examinations, especially if they result in findings of disease, is nearly always required, and must usually be kept by the examining physician.[1]

The third physical qualification, absence of contagious disease, is applied occasionally in bakeshops[2] and in other food establishments,[3] while the fourth, freedom from physical defect which might interfere with proper performance of duty, is mentioned in a few states which require an examination of railroad employees for color-blindness or other defective sight.[4]

(*b*) *Technical Qualifications.* Far more numerous than the examinations to test an adult workman's fitness for a given occupation upon physical, or health, grounds, are those required in nearly all states for the licensing of men to carry on certain trades after a test of experience, skill, or general education. Laws for the examination and registration of barbers,[5]

[1] In Germany this record is called a "control book," and must contain the name of the person keeping it, first and last name, address and age of each workman, date of his entering and leaving the employment, date and nature of his illness, date of his recovery, name of the factory physician, and dates and results of the medical examinations. The employer is responsible for the correctness of the record, and must show it to the factory or medical inspector on demand. The Austrian health register goes into even more detail.

[2] See, for instance, Connecticut, General Statutes 1918, Secs. 2518-2523.

[3] Maryland, Laws 1914, C. 678, Sec. 1 (e).

[4] For example, Ohio, General Code 1910, Sec. 12548.

[5] Found in 1920 in fifteen states.

horseshoers,[1] plumbers,[2] electricians,[3] moving-picture machine operators,[4] chauffeurs,[5] railroad,[6] street-car,[7] and steamboat [8] employees, elevator operators,[9] and even aeronauts,[10] are designed primarily for the protection of the public, and need only be mentioned.[11] More closely related to the subject are technical examinations for miners and for firemen and engineers in charge of stationary boilers.

Statutes requiring the examination and registration or licensing of certain classes of coal mine employees exist in practically all of the important coal mining states.[12] Managers, foremen or bosses, fire bosses, mine examiners, and hoisting engineers are the employees for whom licenses are usually required, but some of the newer laws cover all miners, each of whom, however, is allowed one unlicensed apprentice.[13] Candidates for the more responsible jobs must present affidavits attesting their good character and sobriety, must have a specified number of years' experience, must be residents of the state, and must pass the examination prescribed by an examining board. The increase of foreign-born workmen among the miners is reflected by the growing number of states which require ability to read and speak English.[14] A fee ranging from $1 to $5 is charged

[1] Found in 1920 in four states and in Hawaii. These laws have been declared unconstitutional in Illinois, New York, and Washington, as unduly interfering with a calling not requiring regulation on grounds of public health and comfort.

[2] Found in 1920 in twenty-four states, the District of Columbia, and Porto Rico.

[3] Found in 1920 in three states.

[4] Found in 1920 in six states.

[5] Found in 1920 in twenty-three states and in the Philippine Islands.

[6] Found in 1920 in seventeen states.

[7] Found in 1920 in only three states—Louisiana, New York, and Washington.

[8] Found in 1920 in the United States, eight states, and the Philippine Islands.

[9] Found in 1920 in Minnesota alone.

[10] Found in 1920 in the one state of Connecticut, Laws 1911, C. 86.

[11] Similar in intent is the Wisconsin Industrial Commission order of 1917, fixing standards of technical skill for bricklayers as a prerequisite for giving a certificate to apprentices in the trade.

[12] Such statutes existed in January, 1926, in the nineteen states of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Montana, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, and Wyoming.

[13] Illinois, Laws 1913, p. 438, Sec. 1.

[14] See, for example, Kentucky, Laws 1914, C. 79, Art. XVI, Sec. 1

for the examination and license. The examining boards are composed of from three to five men, one of whom is usually a state mine inspector, the others being miners and mine owners or superintendents in equal number.

Finally, in a number of states [1] and in the District of Columbia licenses are required for certain classes of firemen and engineers employed in connection with stationary boilers. Moral character and temperate habits, one to three years' experience, and a minimum age limit are specified in a few instances, and the license is generally revokable for negligence, intoxication, or violation of law or regulations.

Because they fear loss of employment if found to be suffering from some disqualifying ailment, workmen have at times protested against medical examinations conducted by the employer. Aside from possible abuse of such information, however, the advantages to be gained by the workman through exclusion or timely removal from a disease-breeding occupation would outweigh the hardship due to temporary loss of wages while awaiting recovery or securing other work. Even the wage loss, when exclusion is due to illness, can be in large part taken care of by the extension of workmen's compensation to embrace occupational diseases and by the institution of systems of universal health insurance.[2] For the physician, also, the practice of examining large bodies of men at the place of employment will lead to added insight into the trade causes of disease; an insight which unfortunately is as yet only rudimentary. In any compulsory system of medical examination the physician should be employed by the state.

(2) *Prohibition of Substances or Instruments*

The most notable example of the application of the method of prohibition to a dangerous substance is the world-wide banishing of poisonous phosphorus from the match industry. Within eleven years after the commercial introduction of the

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[2] See "Health Insurance," p. 454.

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phosphorus match in 1827 the disease known as "phossy jaw," or phosphorus necrosis, was attracting the attention of government investigators. Various efforts to eliminate the disease by regulation having signally failed, Finland in 1872 forbade the use of white phosphorus in match factories, and similar action was taken by Denmark in 1874. In France, where match-making is a government monopoly, the profits from the industry were wiped out by sickness and death claims until a harmless substitute was discovered and the dangerous ingredient prohibited in 1897. Other countries followed, and in 1906, on account of the difficulty of eliminating poisonous phosphorus in countries with an important export trade, the International Association for Labor Legislation secured an international conference at Berne which resulted in 1906 in the then unique expedient of an international convention[1] providing for the absolute prohibition of the manufacture, importation, or sale of matches made from white phosphorus. This treaty was signed at once by Denmark, France, Germany, Italy, Luxemburg, the Netherlands, and Switzerland, and a few years later by Great Britain, Spain, and numerous colonies.[2] Canada and Mexico also, without becoming signatories to the treaty, have prohibited the poisonous substance in the match industry. A recommendation that nations which had not yet done so should adhere to this Berne convention was adopted by the International Labor Conference at Washington in 1919. By January, 1926,[3] thirteen additional countries had ratified and two more, without formal ratification, had passed legislation to the same end.

In the United States the question was first given national prominence in 1910 by the report of a federal investigation.[4] Two years later, in April, 1912, Congress placed a prohibitory tax of 2 cents a hundred on matches containing white phosphorus, and prohibited their import or export.[5] The power of

[1] For text of this convention see *Bulletin of the International Labor Office*, Vol. I, 1906, pp. 275-276.

[2] For complete list see table, *Bulletin of the International Labor Office*, Vol. VII, 1912, following p. 503.

[3] See chart on *Progress of Ratifications*, published by the International Labor Office, January, 1926.

[4] United States Bureau of Labor, *Bulletin No. 86*, January, 1910, "Phosphorus Poisoning in the Match Industry," John B. Andrews, pp. 31-146.

[5] United States, Laws 1911-1912, C. 75.

internal revenue taxation which Congress had previously exercised for the benefit of bankers and farmers was thus for the first time used for protecting the health of wage-earners.

Against only one other industrial substance—lead—has the drastic method of prohibition been invoked, and in this case the prohibitory legislation is found only abroad. Austria was first to act, forbidding in 1908 the use of lead in all paints, colors, or cement used for interior work, and the same year the Swiss administrative departments were ordered to forbid the use of white lead in painting carried on in their behalf. The most thoroughgoing action in this regard, however, has been taken by France, which in 1909 declared that after July 20, 1914, the use of "white lead, of linseed oil mixed with lead, and of all specialized products containing white lead, will be forbidden in all painting, no matter of what nature, carried on by working painters either on the outside or on the inside of buildings."[1] By 1924 Greece, Tunis, and Czecho-Slovakia had been added to the list of countries prohibiting the use of white lead in interior painting and, in the case of Tunis and Greece, in some kinds of exterior work. Belgium, France, Germany, Greece, the Serb-Croat-Slovene Kingdom, Tunis, Austria, and Czecho-Slovakia had also forbidden the removal of lead paint by any dry nibbing or scraping process.

A convention adopted by the Third International Labor Conference in 1921 prohibited the use of white lead or lead sulphate in all interior painting—with certain specified exceptions—and eliminated the use of these substances in any other painting work unless employed in the form of a ready mixed paint or paste. This convention also excluded women and young persons from work where the above mentioned poisons were employed and stipulated various precautions, including the elimination wherever possible of dry scraping down, for those operations in which white lead or lead sulphate paints were used. By January, 1926, this convention had been ratified by Austria, Bulgaria, Chile, Czecho-Slovakia, Esthonia, Latvia, Poland, Roumania, Spain, and Sweden.[2]

A few prohibitions apply not to substances, but to instruments

[1] United States Bureau of Labor, *Bulletin No. 95*, July, 1911, p. 180.
[2] See chart on *Progress of Ratifications*, published by the International Labor Office, January, 1926.

of work. One of these is contained in the Massachusetts, Connecticut, and Rhode Island statutes, intended to protect textile mill operatives from "the kiss of death." These laws, in order to prevent the transfer from worker to worker of tuberculosis and other infections, prohibit the use of any form of shuttle in the use of which any part of the shuttle or any thread is put in the mouth or touched by the lips of the operator.[1] Contagious diseases among glass blowers are guarded against in France, Portugal, the Serb-Croat-Slovene Kingdom, and the Mexican state of Jalisco by prohibitions against the use by more than one person of the same blowpipe.

3. Regulation

The method of regulation, in the prevention of occupational accident and disease, as in other social problems, is based on the principle of toleration within limits. The majority of the people may believe that certain dangerous machines or processes are so necessary a part of our industrial life that their prohibition is at present undesirable or at least impracticable. In dealing with industrial accidents and diseases the adoption of this principle leads in the work-*places* to the installation of machine guards, fire escapes, dust and fume removal systems, separate wash-rooms and eating-rooms; and for the work *people* to the limitation of working hours. As the latter point has been considered in the chapter on "Hours of Labor" only the regulation of work-places need be treated here.

Furnishing a reasonably safe place in which to work is plainly the duty of the employer, and was so recognized under the common law and by the employers' liability statutes. Not all industrial managers, however, are equally watchful and energetic, even if all were equally alive to their social responsibility in the matter, and hence has arisen the need of standards, drafted and enforced by public authority, which will throw about the workpeople the necessary protection. So diversified are the various branches of industry and the accident and disease hazards in each that separate codes have grown up about

[1] Massachusetts, Laws 1911, C. 281 Rhode Island, Laws 1918, C. 1632; and Connecticut, Laws 1919, C. 27.

them. These codes deal in the main with (1) factories and workshops, (2) mines and tunnels, and (3) transportation.

(1) *Factories and Workshops*

Modifying to meet its own conditions a mass of legislation already existing in Great Britain, Massachusetts passed on May 11, 1877, the first American law requiring factory safeguards. This pioneer law touched on nearly all of the points now covered by our most advanced statutes for the prevention of factory accidents. It provided for the guarding of belting, shafting, and gearing, prohibited the cleaning of moving machinery, required elevators and hoistways to be protected, and called for sufficient means of egress in case of fire. Practically every state in the union now has a factory and workshop act prescribing minimum conditions of safety.

a. Machine Guards. The point perhaps most frequently dealt with is safeguarding of machinery. Mechanism for the transmission of power, like belting, shafting, and gearing, as well as active parts of machines, such as saws, planers, mangles, and emery wheels, must usually be securely guarded, but if this is not considered possible it is sometimes required that notice of the danger be conspicuously posted. Set-screws or other projections must be countersunk beneath the level of the shaft or otherwise guarded, while shafts and belts, and floor openings through which they pass, must be cased or railed off. A statute found only in the great textile state of Massachusetts requires looms to be provided with guards which will prevent injury from flying shuttles.[1] In employers' liability suits it has often but not uniformly been held by the courts that failure to provide the required safeguards is negligence *per se*,[2] and that the worker does not assume the risk of the employer's negligent disregard of duty, even though he is aware of it.[3] Under workmen's compensation laws the factor of negligence is not considered, but several states have provided for increased compensation awards to penalize employers in case of accidents

[1] Massachusetts, Laws 1909, C. 514, Sec. 101.
[2] Davis *v.* Mercer Lumber Co., 164 Ind. 413, 73 N. E. 899 (1905).
[3] Evansville Hoop & Stave Co. *v.* Bailey, 43 Ind. App. 153, 84 N. E. 549 (1908).

due to their failure to provide legally required safety devices.[1] Many safeguards can be applied best and most economically during the original building of the machine, and Minnesota has prohibited the manufacture or sale of mechanism with danger points unguarded.[2] The same idea is found in the laws of some European countries, and a growing number of American dealers are acting upon it without legislative compulsion.[3]

It is not sufficient, however, for a safeguard to be attached to a machine. If the guard is to do its work it must be actually used. A number of states have therefore passed provisions forbidding any person to move, displace, or destroy any safety device except under rules established by the employer, and some specify immediate repairs as the only cause for which a machine guard may be removed during the active operation of the machine. A related clause forbids employees to operate or tamper with machines with which they are not familiar or which are not connected with their regular duties.

In case of accident it is important that the operative be able to stop the machine at once. It is commonly required, therefore, that shafting be fitted with tight and loose pulleys, and that belt-shifters or poles be supplied for shifting the belt quickly and safely from one to the other. Some states require friction clutches for stopping machinery, and in addition to all these means of safety Illinois, among other states, requires speaking tubes, electric bells, electric colored lights or other means of communication between the workroom and the engine room. Other regulations governing moving machinery forbid cleaning or repairing it while in motion, and overcrowding. Closely related to the foregoing provisions are those dealing with covers or other safeguards on such stationary equipment as vats and pans.

Among other provisions against accident are frequent requirements that stairs must be properly screened at sides and bottom, must have rubber treads if thought necessary by the commissioner of labor, and must be furnished with substantial handrails. Stair openings on each floor must be closed, as

[1] See "Accident Compensation," p. 441.

[2] Minnesota, Laws 1913, C. 316, Sec. 5.

[3] John R. Commons, "How the Wisconsin Industrial Commission Works," *American Labor Legislation Review*, February, 1913, p. 13; *Labor and Administration*, 1913, chap. XXXI.

well as entrances to elevator shafts. Trapdoors, fences, gates, or other safeguards may be required for hoistways, hatchways, and wellholes. It is often required that elevators be provided with automatic catches to prevent falling. In Wisconsin the industrial commission, in 1920, had issued more than seventy-five orders looking to the safe construction and operation of passenger and freight elevators.[1]

Protection against explosions of stationary boilers is best exemplified by the methods of the Massachusetts Board of Boiler Rules. This board, one of the earliest forerunners of the industrial commission plan of drafting and enforcing safety measures, was established in 1907.[2] It is composed of five members: the chief of inspections of the Department of Public Safety, who serves as chairman; one representative of the boiler manufacturing interests; one representative of the boiler-using interests; one representative of the boiler-insurance interests; and one operating engineer. The duties of the board include the formulation of rules for the construction, installation, operation, and inspection of steam boilers. For this purpose public hearings and private conferences are held, and the rules as formulated are submitted to the governor for approval. When approved they are published and have the full force of law. The success of this system in reducing the number of boiler explosions has led to its adoption in many states and cities, even as far away as Manila.

b. Protection against Fire. Though the prevention of fire is of far more importance than providing means of escape, legal provisions covering this point are of comparatively late development. It was not until 1911, for instance, that New Jersey ordered cans to be provided for combustible waste, and it was not until 1912 that New York required gas jets to be inclosed in globes, wire cages, or other protection, and forbade smoking in factories. Meanwhile, disastrous factory fires in both states, due in part to lack of these safeguards, had attracted the attention of the country, and resulted in much legislation. In some states floors must now be swept daily and the sweepings re-

[1] Industrial Commission of Wisconsin, *Elevator Code*, 1918.

[2] Massachusetts, Law 1907, C. 465, Secs. 24-28, as amended by Laws 1909, C. 393; Laws 1913, C. 610; Laws 1918, C. 257; and Laws 1919, C. 5 and C. 350.

moved, and the quantity of explosives that may be kept in a building is carefully regulated. Sometimes factories must be equipped with an automatic gas cock or appliance by which in case of fire the supply of gas may be shut off without entering the building.

Required means of extinguishing fires include pails of water or sand, a standpipe and hose of specified dimensions, fire extinguishers or automatic sprinkler systems. The major part of fire laws, however, is devoted to provisions for prompt escape. In the early days of this legislation, since no one had taken the time to study out what would constitute effective egress, lawmakers contented themselves in most cases with ordering "suitable and sufficient" exits and escapes. Now the most elaborate details as to material and construction are found. Balcony escapes, fire towers, or chutes or toboggans may be used in different states. Doors must be constructed to open out or slide, and must not be fastened in any way during working hours. Sometimes the number of employees to the floor is regulated, periodical fire drills are called for, and gongs, and red lights or other "Exit" signs, must be installed. A growing number of states require plans for fire egress in new buildings to be passed upon by labor or building department officials.

c. Lighting, Heating and Ventilation. Although proper lighting affects both the health and comfort of the workman and his liability to accident, less attention has been paid to this phase of industrial safety and hygiene than to almost any other point of similar importance. Only a dozen states had by 1926 enacted any legislation on the subject, and most of those limited themselves to general provisions such as that factories must be "well and sufficiently lighted," [1] meaningless and unenforceable except where industrial commissions had power further to define the standards in administrative orders. A long step in advance was made by the Oregon statute of 1919, requiring factories to be lighted according to a minimum scale

[1] Connecticut (General Statutes 1902, Sec. 4518) adds that painted, stained, or corrugated glass in factory windows must be removed, "where the same is injurious to the eyes . . . upon the order of the factory inspector." In other words, Connecticut permits any factory-owner to block out light by any one of the three methods named until ordered to desist by the inspector, who must, however, first prove that the darkness is injurious.

of values to be recommended by the Illuminating Engineering Society, subject to modifications after public hearing.[1]

Artificial lighting in factories is notoriously bad because of poor quality, insufficient quantity, haphazard distribution resulting in spots of excessive intensity separated by dangerous shadows, and glare caused by lack of shades or diffusing mediums. Many eye specialists assert that from 80 to 90 per cent of headaches are due to eyestrain, and in the production of eye strain improper lighting is an important factor. The effects of poor illumination are particularly severe upon women workers, because of their more delicate nervous organization. Yet at the present stage of the art all harmful light conditions in factories could be done away with easily and cheaply. "It can easily be shown," declares one expert, "that a workman earning only $2 per day of ten hours would have to lose but three minutes of his time to make a loss to the manufacturer equal to the cost of all the artificial light he could possibly require during the entire day." [2]

Indications of what a really scientific law on factory lighting might be are found in the Holland statute. There women and children are forbidden to work in establishments where artificial illumination is ordinarily required between 9 A.M. and 3 P.M. The minimum light permissible for processes exceptionally trying to the eyes, such as embroidering, typesetting, and instrument-making, is specified and a slightly lower standard is established for less exacting occupations.

With the growth of industrial commissions in the United States there is now developing a body of regulations prescribing standards of factory lighting by administrative order.[3]

Some dozen states authorize the inspector to require changes in heating apparatus found dangerous to health, but no standards of proper or permissible temperature are set up. Massachusetts has established for certain textile processes a graduated standard of humidity permissible at certain temperatures,[4] but only in a very few laws is the subject of humidity

[1] Oregon, Laws 1919, C. 181.

[2] F. Leavenworth Elliott, "Factory Lighting," *American Labor Legislation Review*, June, 1911, p. 116.

[3] See, for instance, Industrial Accident Commission of California, *General Lighting Safety Orders*, 1919.

[4] Massachusetts, Laws 1910, C. 543.

mentioned. Yet apart from the presence of dusts and fumes, the only atmospheric condition which has been thoroughly proven harmful is the combination of excessive heat with excessive humidity.

Recognition of the importance of ventilation is more widespread. Industrial dust and fume, whether metallic, chemical, vegetable, or animal in origin, and whether poisonous or not, are among the most insidious and serious of modern health hazards, and the illness and death of wage-earners vary almost in direct proportion to the contamination of the air supply. Hence, more than half the states have enacted provisions that factories shall be ventilated. The wording, however, is in many cases so vague that it means but little. Among the first laws which attempted to establish even an elementary standard of ventilation was the Illinois statute of 1909. Under this act the amount of fresh air to be supplied depends upon the kind of illumination used, the cubic air space furnished for each employee, and the window area of workrooms.[1] Provisions for from 250 to 600 cubic feet of air space for every employee are now found in a few state laws, but more important are the newer regulations providing for the retention and removal of dangerous dust and fume at the point of production by specially constructed hoods, hoppers, exhausts, and fans. Regulations of this type, originally established either as statute laws or by administrative order principally in the large lead-using states, such as Illinois, Missouri, New Jersey, New York, Ohio, and Pennsylvania, by 1926 had been adopted by more than twenty legislatures.[2] As additional precautions, the best of these laws require wet-cleaning methods, the use of respirators, and separate lunch-rooms, and forbid bringing any food or drink into the workrooms. Similar provisions in the laws of other countries have helped reduce the risk of lead poisoning far beneath previous American expectations. For instance, in an American white- and red-lead factory, employing eighty-five men under unregulated conditions, the doctor's records for six months showed thirty-five men "leaded," while an English

[1] Illinois, Laws 1909, p. 202.

[2] For a comprehensive act of this type see New Jersey, Laws 1914, C. 162.

plant of the same nature, with ninety employees, but under strict supervision, reported no cases for five years.[1]

In at least two cases ventilation statutes have been declared unconstitutional by state courts, but both times upon issues not related to the purpose or benefits of the laws, and in both cases they were soon replaced by amended acts. In 1901 the California law of 1889 was challenged on the ground that it made the commissioner of labor the judge not only of the need for means of dust removal, but also of the character of the appliance to be installed. The Supreme Court upheld the objection,[2] but the invalid statute was immediately replaced by a new law, giving the commissioner power to order only proper appliances instead of some particular contrivance. In Illinois a 1911 statute forbade the use of emery or similar wheels "in any basement so called, or in any room lying wholly or partly beneath the surface of the ground." This provision the Supreme Court of Illinois held to be an "unwarranted discrimination," since it condemned all rooms of the class named without reference to their adequate ventilation or lighting.[3] The legislature of 1915, however, reenacted substantially the same provision, with a change of wording designed to overcome the objection.

d. Seats, Toilets, and Dressing-rooms. In safety and health legislation, as well as in legislation on hours and wages, a distinct tendency is noticeable to single out women for special protection, on the grounds of their greater physical weakness and their comparative helplessness as wage bargainers. The possibilities of injury from unsafe or insanitary conditions are more apparent and it is easier to make a conclusive case in their behalf. Not infrequently health and safety laws applied only to women when first passed, but were later extended to protect all workers. For instance, in Colorado a law which originally required handrails on stairways only in buildings where women were employed was extended in 1911 to cover all work-places.[4] Or in some cases a law affording some protection to all workers may be of wider scope in its application

[1] *American Labor Legislation Review*, December, 1914, p. 539.
[2] Schaezlein *v.* Cabaniss, 135 Cal. 466, 67 Pac. 755 (1901).
[3] People *v.* Schenck, 257 Ill. 384, 100 N. E. 994 (1913).
[4] Colorado, Laws 1911, C. 132.

to women. Thus, in Missouri mechanical means for dust removal must be installed in all factories carrying on dusty processes where three or more "persons" are employed, and also in dusty workshops if the three or more employees are "children, young persons, or women."[1]

Particularly striking is the special protection of women manifested in the factory and mercantile laws on seats, toilets, and dressing-rooms. In fact, except for provisions in about half a dozen states requiring seating arrangements for motormen and conductors on street-cars, legislation with regard to seats exists almost entirely for women.[2] As far back as the end of the 'seventies the dangers of constant standing for salesgirls were recognized, and it was urged that they be furnished seats and allowed to use them. A law containing such provisions was passed by New York as early as 1881. Almost every state now requires suitable seats for females in at least mercantile establishments.[3] The majority of laws extend this requirement to manufacturing or to manufacturing and mechanical establishments, and several states cover practically all employments. The proportion of seats to workers is sometimes fixed and in many cases the law specifies that employers must permit the use of the seats when work will not thereby be interfered with. These laws are of little real importance in protecting health, however, since it is practically impossible to see that employers and foremen allow the seats to be used even when provided.

Some two-thirds of the states likewise require sanitary and separate toilets for women workers in addition to those for men, and about one-half make provision for women's dressing-rooms. These provisions form a very important factor in maintaining the health and morals of women workers in any establishment; the character of the employment frequently makes necessary a change from street clothes to work clothes,

[1] Missouri, Revised Statutes 1909, Secs. 7858-7859, as amended by Laws 1919, p. 439.

[2] California, however, requires seats for passenger elevator operators regardless of sex, Acts 1921, C. 115, and Florida makes no sex distinction in its law requiring seats for employees in mercantile or other business pursuits. (Revised General Statutes, 1920, Sec. 5068.)

[3] By 1926 only Mississippi, New Mexico, and North Dakota were without such legislation.

and it is also highly desirable that a suitable place be provided where women and girls may eat lunch, secure a little rest at the noon period, and retire in case of illness.

For the lead industries, especially, careful wash-room standards have been worked out, specifying hot and cold water, a definite ratio of basins or of trough length to the number of employees, soap, nail brushes, and towels. In the best lead laws, also, such as those of New Jersey, Ohio, and Pennsylvania, hot and cold shower baths are required, to be used at least twice a week on the employer's time, and to insure the use of the baths a bath register must be kept. A few states require a sufficient supply of pure drinking water to be kept in a readily accessible place. Sometimes, especially in connection with foundries and casting rooms, the lead trades and compressed-air work, the dressing-rooms must be properly heated and ventilated, and often supplied with lockers and with facilities for drying clothes.

e. Protection from Infectious Disease. Modern industrial processes subject large numbers of employees not only to dangerous dusts and vapors, but also to a variety of disease-breeding organisms, carried either by fellow workmen or by the materials worked upon. As a protection against such infection a number of legal regulations have been adopted.

Several states, for example, forbid sleeping in workrooms, some require cuspidors to be furnished and to be cleaned and disinfected daily. Massachusetts in 1913 required that cloths or other material provided for cleaning printing presses must be sanitary,[1] and a California law of the same year laid down the rule that all wiping rags must be sterilized.[2] Similar legislation was passed in Ohio in 1923.[3] In every industrial state hundreds of cases of infection or "blood poisoning" occur yearly, and about six out of every seven of these are the result of small scratches. The requirement now found in some states for a first aid kit in factories, workshops, and mercantile establishments should assist in reducing this needless danger.

Prominent among the infectious diseases of industry is anthrax, which arises in the handling of infected hides or hair.

[1] Massachusetts, Laws 1913, C. 472.
[2] California, Laws 1913, C. 81.
[3] Ohio General Code, Secs. 1011-1011.

By 1924[1] Austria, Belgium, France, Germany, Great Britain, India, Italy, Jalisco, and Russia all had turned their attention to eradicating this malady. Despite searching investigation, however, the United States remains nearly inactive.[2] The commonest legal safeguards are provisions for thorough washing, for overalls, neck coverings, and gloves, and for treating instantly scratches and slight wounds which offer an entrance to the bacillus. Disinfection of bristles and bales of hair from suspected localities before any work is done on them is insisted on in some countries. Another recommendation of the Washington International Labor Conference of 1919 was for the disinfection, either in the exporting country or at the port of importation, of wool contaminated with anthrax spores. By 1926 India, Netherlands, and Poland had formally adhered to this recommendation.[3]

f. Tenement House Manufacture. Difficult as are the problems connected with the regulation of labor conditions in factories, they are not more troublesome than those encountered in the regulation of tenement workshops, where the work is done by the family group in its customary living quarters.

Tenement house manufacture is often looked upon as a pleasant and easy method whereby the mothers of the poor may add to the family income in their leisure moments. The fact is that such work has usually proven a menace to health, to wage standards, and to the existing labor laws. Congestion, insanitary quarters, lack of restriction on child labor, absolutely unregulated hours, and miserable pay combine to create a condition which endangers the lives not only of the workers, but of the purchasers of their product. Often tenement dwellers have been found at work on garments and articles of food while suffering from contagious diseases.[4]

As early as 1885 New York sought to end the "sweating" or tenement workshop system by prohibiting the manufacture

[1] See indices of the *Legislative Series* published by the International Labor Office.

[2] See United States Bureau of Labor Statistics, *Bulletin No. 267*, "Anthrax as an Occupational Disease," John B. Andrews, 1920.

[3] *Official Bulletin of the International Labor Office*, Vols. IX and X.

[4] See *Second Report of the New York State Factory Investigating Commission*, "Manufacturing in Tenements," Vol. I, pp. 90-123; *Report on Condition of Woman and Child Wage-earners in the United States*, Vol. II, "Men's Ready-made Clothing."

of cigars and other tobacco products in tenement houses in cities of the first class. The law was declared unconstitutional, the court holding it an abuse of the police power and an infringement of the cigar-maker's liberties in that it sought to force him "from his home and its hallowed associations and beneficent influences, to ply his trade elsewhere." [1] Had this pioneer statute been sustained, the entire problem of tenement house labor might have been disposed of almost at its beginning.

The setback in the Jacobs case radically changed the method of attack on the sweating system. Prohibition having been declared invalid, for three decades nearly all effort was directed toward regulation and the imposing of minor restrictions through a licensing system. In 1891 Massachusetts passed "An act to prevent the manufacture and sale of clothing made in unhealthy places," and the following year New York inserted in its newly codified labor law a provision for the licensing and regulation of tenement workshops. Similar provisions exist in about a dozen states.

These statutes ordinarily require that home work on garments, foodstuffs, and tobacco must be done only in rooms licensed by the factory inspection department. Only members of the immediate family, which is carefully defined, may be employed, and licenses may be issued only if fire escape, toilet, and all other health and safety laws have been complied with. In case of disease, work must cease until the board of health has declared the illness at an end and has fumigated the apartment. A register must be kept of names and addresses of persons taking out work, and goods given out must be labeled with the name and address of the manufacturer. Licenses are revokable for failure to comply with the law, or, in some of the newer acts, "if the health of the community or of the persons employed thereunder requires it." [2]

The results of attempted regulation under even the best of these laws have, however, never been satisfactory. On July 1, 1917, for instance, there were more than 15,000 licensed tenements in New York City alone, and over 700 in the rest of the state. In addition to these, home work was found going on in more than 9,000 homes other than tenement houses, over

[1] *In re* Jacobs, 98 N. Y. 98 (1885).
[2] See, for instance, Maryland, Laws 1914, C. 779, Sec. 248.

which the law gives no control whatever. As the working day of a factory inspector is eight hours long, it has been computed that it would require three inspectors to each tenement to which the laws applies, or an army of over 45,000 in all, to set a continuous day and night watch upon these dwellings to see that no violation of the law were going on; and this estimate takes no account of the fact that home work is covertly carried on in unlicensed as well as in licensed houses. "After twenty-one years," declare those who have long been sympathetic observers of this legislation, "the difficulties of inspection have been proved insuperable." [1]

In 1913, after the able investigations of the state factory investigating commission, New York once more turned toward the prohibitory method in dealing with this question, and forbade work in tenement homes on food products, dolls or dolls' clothing, and children's or infants' wearing apparel.[2] The prohibition covered work done either directly for a factory or indirectly through a contractor, and was applied to these articles first because of their close relation to public health, especially the health of children. This law was upheld by the courts in 1915.[3] There is little doubt that in the present state of public knowledge these restrictions will be followed by others.[4]

(2) *Mines and Tunnels*

Underground work of any sort obviously subjects the workman to greater dangers, both as to health and to safety, than do most of the manufacturing industries. Distance beneath the surface, artificial light, poisonous gases, explosive dusts, dampness, intestinal parasites, extreme heat, and in some kinds of work abnormal air pressure amounting often to several atmospheres, all contribute to render underground occupations extraordinarily hazardous. It is for this reason that the valid-

[1] *Constitutional Amendments Relating to Labor Legislation and Brief in Their Defense,* submitted to the Constitutional Convention of New York State, June 9, 1915, by a committee organized by the American Association for Labor Legislation, p. 51.

[2] New York, Laws 1913, C. 260.

[3] People *v.* Balofsky, 167 N. Y. App. Div. 913 (1915).

[4] In 1920, for instance, the Women's City Club and the City Club of New York united in furthering a bill to prohibit in tenement living rooms all work let out by factories.

ity of hour legislation for adult men has become thoroughly established in the mining industry, although in many other lines of work such restrictions are still subject to attack on the score of unconstitutionality.[1]

a. Mining. In these circumstances it is not surprising that mining furnishes one of the highest fatal accident rates in industry. Metal mining has a higher death rate than coal mining, and employment in anthracite coal mines is more dangerous than in bituminous mines, since the former are deeper and more subject to accumulations of noxious and explosive gases.

Coal mining appears to be more dangerous in America than in any other country. In realty our mines are shallower and less hazardous to work, but our methods of mining, while enabling us to lead the world in productivity,[2] have resulted in our leading it also in human sacrifice. Standing second with regard to numbers employed, the United States leads all other important coal-producing countries both in total number and in rate of fatal accidents. During the ten years ending with 1910 the average fatal accident rate per 1,000 employed in coal mining was 3.74 for the United States, 2.92 for Japan, 2.11 for Germany, 1.69 for France, 1.36 for Great Britain, 1.04 for Austria, and 1.02 for Belgium.[3] Figures for more recent years are even more unfavorable to the United States.[4]

Health dangers and occupational diseases among miners have been given much less legislative attention than has the subject of accidents. Accidents are usually more spectacular, their causes are more certain and more easily located, and, moreover, an employer may be held in damages for accidental injuries to mine workmen, while only a few American states have provided compensation for occupational diseases.[5] Among the more

[1] See, however, discussion of this point under "Maximum Hours, Men," pp. 274-276.

[2] See United States Bureau of Mines, *Technical Paper No. 2592.*

[3] United States Bureau of Mines, *Bulletin No. 69,* "Coal-mine Accidents in the United States and Foreign Countries," Frederick W. Horton, p. 87.

[4] See "Coal-mine Fatalities in the United States and Europe," by W. W. Adams, United States Bureau of Mines, *Technical Paper No. 2592,* April, 1924.

[5] For a further discussion of this subject see chap. VIII, "Social Insurance."

important legal provisions for safeguarding the life and health of miners are the requirements for detailed maps of mines showing all workings and open at all times to mine inspectors, for a sufficient number of escapement shafts, for proper ventilation, a supply of pure air, and frequently for a special employee to inspect the mine daily for explosive or poisonous dusts or gases. Precautions against falling rock or coal must also be taken by carefully timbering dangerous places as far as known. Rules are laid down in regard to proper methods of drilling and blasting, and hoisting gears and cages for carrying men in and out of the mine must conform to specific requirements. Safety lamps, shelter holes, fencing of machinery, telephone connections, restrictions upon the storing of explosives and upon the quality of illuminating oils—these and many more safeguards are frequently required and carefully defined by law. In the newer laws provision is usually made for a rather limited first-aid equipment.

One of the most serious hazards of coal mining, the explosiveness of bituminous coal dust, is still to be adequately dealt with in American legislation. Coal dust is inflammable and its presence in the air serves to carry a slight spark or minor explosion throughout a mine in a series of devastating blasts. Some of our laws require periodic sprinkling with water in dusty mines but this device, once considered a satisfactory precaution, has been shown by experience to be most undependable.[1] Research abroad and by our own Bureau of Mines, however, has disclosed a really adequate safeguard—sprinkling the mine with non-inflammable rock dust. Experience in European countries legally requiring the use of rock dust in bituminous mines [2] as well as in scattering American mines [3] which have within the past few years voluntarily installed this safety measure, proves conclusively that this constitutes a real protection. Fortunately, the experience shows also that the device is both simple and relatively inexpensive

[1] United States Department of the Interior, Bureau of Mines, *Bulletin No. 225*, "Stone Dusting or Rock Dusting to Prevent Coal Dust Explosions as Practiced in Great Britain and France," by George S. Rice, 1924.
[2] *Ibid.*
[3] Rock Dust Saves 1,050 Lives in a Single Accident," *American Labor Legislation Review*, March, 1926, pp. 67-68. See also other references cited in this article.

to put into operation.[1] It should unquestionably be required by law for all bituminous mines. By 1926, however, only one of our states had such a requirement in force. In 1924, following a catastrophic explosion at Castle Gate, which cost 172 lives, the Utah Industrial Commission issued a series of orders [2] making rock dusting mandatory in Utah coal mines. Several states have recently amended their codes to permit rock dusting instead of the previously required water sprinkling, and the continuously growing demand for mandatory legislation on this subject makes probable its general adoption in the near future.

The enforcement of mine safety provisions in the various states is usually entrusted to a special body of mine inspectors, who either form a separate bureau of mine inspection or are attached to the state department of industrial inspection. Mine inspection protects the property of the employer as well as the lives of the employees, and many states require of inspectors a certain number of years' experience and also civil-service examinations conducted by an examining board frequently composed of representatives of employers and employees. The authority of the inspectors is sometimes far-reaching, extending even to the power of stopping work if the mine regulations have not been obeyed. The best results in the enforcement of mine safety and health legislation have been achieved in states where, as in Illinois, joint conferences of miners and mine-owners have been brought together for the administration as well as the drafting of the laws.

A significant step was the establishment by Congress in 1910 of the federal Bureau of Mines with the function, among others, of conducting "scientific and technologic investigations concerning mining," with a view to improving health conditions and increasing safety and efficiency. The bureau has no authority to do anything except conduct investigations, publish reports, and furnish advice, all enforcement of mine laws being left in the control of the states, but within its limited field it has already performed valuable services. Series of bulletins

[1] "Cost of Rock Dusting to Prevent Coal Dust Explosions is Remarkably Low," *American Labor Legislation Review*, September, 1924.

[2] *Supplement to General Coal Mines Safety Orders*, approved by the Industrial Commission of Utah, April 8, 1924.

and technical papers distributed free present the results of the latest scientific inquiries into the causes and prevention of mine explosions and other accidents, and some half-dozen mine rescue stations have been established, one in each of the more important coal fields of the country. Connected with each station is a fully equipped mine rescue car, in charge of a mining engineer and two especially trained miners, which tours the district, giving practical instruction in safety work, and is dispatched at once to the scene of any disaster. Previous to creating this bureau, Congress had enacted a code for the regulation of mining conditions in the federal territories, which is still in force in Alaska and in the insular possessions.[1]

b. Work in Compressed Air. An industrial hazard brought into prominence by the increasing construction of tunnels, subways, bridges, and skyscrapers is compressed-air illness, or the "bends." An investigator for the Illinois Commission on Occupational Diseases secured interviews with 161 men who had sustained attacks of the malady, and the medical director at the construction of the Pennsylvania-East River tunnels in New York in 1909 reported 3,692 cases, of which twenty were fatal.

In 1926 only three states, New York, New Jersey, and Pennsylvania, had attempted to control the disease by legislation, although in other states similar steps have been taken through the method of administrative orders.[2] The customary provisions include physical examinations of all applicants for work and of all employees at stated intervals, a sliding scale of working hours, decreasing as the pressure increases,[3] and a period of gradual "decompression," ranging from one minute for emergence from a pressure of ten pounds above normal to twenty-five minutes for emergence from a pressure of fifty pounds above normal. Work under more than fifty pounds' pressure is forbidden. The employer must maintain dressing-rooms with lockers, hot and cold shower baths, and provision for drying clothes. Medical attendants are also required, as well as a hospital lock for the recompression and treatment of sufferers from the disease.

[1] United States, Laws 1890-1891, C. 564.
[2] See p. 420.
[3] See "Hours of Labor, Men," p. 276.

(3) *Transportation*

Protective legislation regulating working conditions in transportation relates mainly to safety. While aviation was undoubtedly the most hazardous form of transportation, protective legislation for aviators had, by 1926, only a limited development. Some half-dozen states did, however, require licenses for flying, in a few cases including a minimum age requirement among the prerequisites. As might be expected, the earlier development and more extensive commercial use of land and water transportation had resulted in a much larger body of protective legislation in those industries. These measures either may be designed for the protection of employees, as in the case of automatic couplers on railroads and the provision for emergency exits for seamen, or they may be intended primarily for the protection of the traveling public, as in the case of boiler inspection in both kinds of transportation. A few measures such as the full-crew laws on railroads and in navigation have been urged as a direct protection for both laborers and travelers.

The majority of transportation employees are engaged in traffic which is interstate or international in character. The more important legislation affecting this class of workmen has therefore been federal rather than state. Railway employees have been more often brought under state laws than have seamen, but when any question has arisen over the respective jurisdiction of state or federal authority the latter has practically always been given precedence by the courts.

a. Navigation. While slavery and serfdom have been abolished for the majority of workmen in most civilized countries, until 1915 the seaman in America was kept in a position of semislavery through employment under a contract enforceable by imprisonment. This position of involuntary servitude gave him but little effective voice in regulating the conditions under which he worked. In the early days of sea travel a shipowner's interest impelled him to secure an intelligent and competent crew which could protect his cargo. With the substitution of steam for sails, the spread of lighthouses and channel markings, and the growth of marine insurance and limited liability legislation, the quality of seamanship had greatly de-

clined. In the majority of serious sea disasters in recent years the lack of both skill and numbers in the working force has been officially reported. There had apparently been a steady increase in the size of the load carried, without a corresponding increase in the number and skill of those employed to handle it. The "seaman" had been displaced by the "deck hand," the American by the Northern European, and the latter by the immigrant of the Southern races.

In a few states legislation looking toward general marine safety has been enacted, such as provisions for boiler inspection and signal lights, but most of the legislation affecting seamen has been federal. As early as 1798 Congress recognized the need of special protection for this class of workmen, many of whom are single and homeless. In that year the federal government established a marine-hospital fund to maintain hospitals for the care of disabled seamen of ships belonging to the United States. During the latter half of the nineteenth century Congress continued its protective policy toward seamen by legislation, regulating, among other matters, the conditions of living and working on shipboard, the size and experience of crews, and the construction and inspection of vessels. Despite these regulations the position of seamen was held to be most unsatisfactory, and it was not until the passage of the federal Seamen's Act of 1915 that the grosser injustices were removed.[1]

While the outstanding features of this act related rather to the personal freedom of seamen,[2] additional provisions were made for the health and comfort of employees through the requirement of proper washing places and sleeping rooms, hospital space, fumigation, heating, lighting, ventilation, and drainage.

It has been repeatedly pointed out that in case of accidents at sea, such as fires or boiler explosions, a ship cannot summon assistance as a manufacturing establishment, for instance, is able to do on land, but must rely upon its own crew and the chance aid of near-by vessels. For this reason the only way

[1] United States, Laws 1914-1915, C. 153, as amended by Public 141, Sixty-fourth Congress, First Session, and Public 261, Sixty-sixth Congress, Second Session.

[2] See "Contract Labor," pp. 44-45.

really to safeguard human life at sea is to provide an equipment and crew adequate to meet any reasonable emergency. The Seamen's Act of 1915, therefore, provided for a substantial increase in the size of the crews employed, for a certain percentage of able seamen, for "certified lifeboat men," and for properly constructed lifeboats, the number to be fixed according to the size and character of the ship and its cargo.

b. Railroads and Street-cars. In the early days of railroading, reports of deaths and mutilations, particularly in connection with the coupling of cars, were repeatedly made public, and the need of protective legislation became apparent, especially as the length and complexity of lines developed and as speed increased. At the middle of the nineteenth century only about 9,000 miles of railroad existed. In 1869 a through route to California was opened, and by 1880 the total mileage had increased to 86,000. Between 1880 and 1890 more miles of new road were built than during the entire period previous to 1875, and in the early 'eighties a few states enacted protective legislation. It soon became apparent, however, that state legislation alone would result in long delays and in a great lack of uniformity. As the occurrence of serious accidents continued and as interstate commerce developed, the need of federal regulation became more apparent.

Many experiments were carried on in search of proper safety devices, and as early as 1868 a successful application of air brakes was made. The most serious danger to employees resulted from their being required to go between cars in order to couple or uncouple them. It was not until 1887 that a satisfactory automatic coupler was devised for general use. In order to compel the general adoption of the standard coupler the necessity of federal legislation was recognized.

Although the Interstate Commerce Commission, created by the federal Act of February 4, 1887, had power to investigate and regulate rates, the act made no mention of safety appliances or the protection of employees. The absence of authority over these matters was remedied by the federal Act of March 2, 1893, and several subsequent acts[1] made it obligatory upon all roads engaged in interstate traffic to equip all cars and loco-

[1] United States, Laws 1892-1893, C. 196; Laws 1902-1903, C. 976; Laws 1906-1907, C. 225.

motives with approved automatic couplers, and to provide other safeguards such as power brakes and grab irons.[1] In this particular, American labor legislation was far in advance of European. The results of the coupler legislation are particularly striking. In 1890, when only about 10 per cent of railway cars were equipped with automatic couplers, accidents in the coupling of cars amounted to nearly half of all casualties to trainmen. By 1912, when over 99 per cent of all cars were so equipped, the proportion of accidents from this cause was reduced to about 8 per cent. The majority of early regulations imposed by the federal government, however, left open to the various roads the determination of the kind and character of devices to be installed. The absence of a central standardizing authority resulted in lack of uniformity, and at times in the adoption of inadequate or ineffective devices. In 1910, therefore, an act of Congress, in addition to making new safety provisions, gave to the Interstate Commerce Commission power, after proper hearings, to "designate the number, dimensions, location, and manner of application of the appliances," and thereafter such determinations were to remain as "the standards of equipment," and any failure to comply with any requirement of the commission was subject to a "like penalty as failure to comply with any requirement of this act."[2] At the same session of Congress the commission was given authority to investigate all collisions, derailments, or other accidents, to subpœna witnesses, administer oaths, take testimony, and to require the production of all papers, books, and other evidence. It might also make a public report "together with such recommendations as it deems proper." One year later $25,000 was appropriated for the use of the commission in making tests and establishing standards[3] and a maximum of $300,000 a year was appropriated to provide for proper boiler inspection by a staff of fifty-three inspectors working in close cooperation with the

[1] For the further protection of employees and as a stimulus to the roads to use every possible safety precaution, Congress also provided that no employee injured on a train not equipped according to law could be held to have assumed the risk of his employment even though he knew of the violations. This provision has been upheld in the North Carolina case of Greenlee *v.* Southern R. Co., 122 N. C. 977, 30 S. E. 115 (1898).

[2] United States, Laws 1909-1910, C. 160.

[3] United States, Laws 1910-1911, C. 285.

commission.[1] Additional inspectors were provided and the maximum limit upon appropriations struck out by an amendment of 1924.[2]

Beginning with the great increase in railroad mileage in the early 'eighties, state legislation grew in volume and developed along two lines, one mainly for the protection of employees, and the other mainly for the protection of the traveling public. Measures for the protection of travelers are of two kinds. The first relates to mechanical devices for the prevention of accidents, such as automatic bell ringers, brakes, headlights, and signal lights, while the second relates to the qualifications and training of employees.

Among the measures which have been passed primarily for the protection of employees are found such requirements as those for the installation of grab irons, ladders, running boards, storm windows in engines, the maintenance of a proper temperature in mail or baggage cars, the regulation of the height of bridges or other overhead structures, the maintenance of a proper clearance around tracks, particularly in railroad yards, the blocking of frogs and switches, and, for employees engaged in repairing tracks, the erection of sheds to protect them from inclement weather. For the safety and convenience of employees who are frequently required to travel long distances on freight or stock trains caboose cars must be provided, which must be constructed according to certain rules of size, strength, safety, and comfort.

Employees on street or interurban railways are also frequently protected through state legislation or municipal ordinance. Such measures relate usually to inclosed vestibules during the winter months, seats for motormen, and proper automatic brakes, and occasionally to equipment for the sanding of rails, to the examination of employees, and to minimum age limits.

During the past few years the sharpest debate in matters of railway safety legislation has centered about the full-crew laws, which are held to protect both the public and the employee. More than twenty states have enacted such legislation but in several cases the opposition of the railroads has resulted in its

[1] United States, Laws 1910-1911, C. 103.
[2] Public 277, Sixty-eighth Congress, First Session.

subsequent repeal. A few states fix no statutory limit but empower their railroad or public service commissions to determine the size of the crews. These acts usually apply to both passenger and freight service on roads of given lengths, and fix the number of employees—principally of brakemen—in proportion to the number and kind of cars in the train. Full-crew laws have been initiated by the railway men's organizations and have been vigorously opposed by the railroad owners, who have contended that as a rule larger crews are unnecessary because of the reduction in the amount of work required of employees since the introduction of safety devices, the formation of special switching crews, and the generally improved methods of handling trains. They point also to the increase in operating cost, resulting in reduced dividends and in curtailment of improvements.[1]

On the other hand, the trainmen point to the large number of both fatal and non-fatal accidents, and to the increasing strain upon railway employees due to the increase in the weight of trains, in the number of tons per train, and in the number of cars per man. They hold that by these increases the railroads have made their greatest economies. The trainmen maintain, therefore, that full-crew legislation serves practically the same purpose as legislation restricting hours of labor, in that both reduce the physical strain and thereby the frequency of accidents.

This is the view which was adopted by the Supreme Court of Pennsylvania when in 1913[2] it upheld the full-crew law of that state, enacted in 1911,[3] as having a real and substantial relation to the safety of passengers and employees on railroad trains. The company presented evidence as to the cost of the legislation, but the court held that: "Uncompensated obedience

[1] For a full discussion of this subject see bulletin Consecutive No. 73 of the Bureau of Railway Economics, Washington, D. C., "Arguments for and against Train-crew Legislation," 1915.

[2] Pennsylvania R. Co. *v.* Ewing *et al.*, 241 Pa. 581, 88 Atl. 775 (1913). A similar decision was rendered in Chicago, Rock Island and Pacific R. Co. *v.* Arkansas, 219 U. S. 453, 31 Sup. Ct. 275 (1911), upholding the 1907 law in that state.

[3] Pennsylvania, Laws 1911, No. 811. This law was repealed in 1921 and the public service commission was vested with authority in this matter. (Laws 1921, No. 184.)

to a regulation enacted for the public welfare or safety under the police power of the state is not taking property without due compensation, and any injury sustained in obeying such a regulation is but *damnum absque injuria.*"

State provisions for railroad safety have frequently been contested on the ground that regulations which apply to interstate commerce are a subject for federal legislation; but the courts have uniformly held that where Congress has not legislated upon these questions the states were entirely within their rights. An interstate road, therefore, might either make such changes as were necessary, as it passed from one commonwealth to another, to meet the minimum requirements of each commonwealth, or it might comply everywhere with the maximum provision found in any of the states through which it passed.

Although much of the protective railroad legislation is mainly for the benefit of employees, it is recognized that the safety of the public depends in large part upon the safety of those who are entrusted with the care and management of trains. It is this aspect of the matter which has largely influenced the courts in rendering favorable decisions on safety and health laws for railway employees.

The enforcement of protective regulations in relation to railway labor has in the majority of states been entrusted to railway or public utility commissions created primarily to supervise or regulate rates. In this class of legislation, as in the regulation of conditions in factories, workshops, and mines, it has been found impracticable to embody in the statute law specifications which will be effective under diverse and constantly changing conditions. For this reason many legislatures have delegated to the railroad commissions power to work out details of provisions and to prescribe safety rules and regulations. This method of protection has repeatedly been sustained by the courts. In 1913 the law creating the Railroad Commission of Indiana and an early ruling of the commission fixing a 1,500-candle power standard for locomotive headlights were both attacked as unconstitutional. The case was carried to the supreme court of the state, which upheld the delegation of legislative powers, declaring that: "The decisions of this court and the courts of other states in this regard are clearly against

the appellant's contention."[1] Subsequent appeal to the United States Supreme Court also resulted in the statute's being upheld.[2]

4. Development of Standards

A careful study of the early laws to preserve industrial safety and health, as passed by Congress and by the legislatures of the fifty American states and territories, discloses at once four fundamental defects.

(1) *Defects of Early Legislation*

First among these defects is *the incompleteness of these laws.* It was long the custom of legislatures to specify in the law the industries and danger points which were to be safeguarded, and to confine the inspectors' authority to the places and conditions mentioned. Under this method many industrial danger points were overlooked. Perhaps "buzz saw" or "dangerous dusts" or "foundry" was omitted from the law inadvertently or otherwise. Although often fraught with harm to the worker, these unmentioned points were outside the authority of the inspection officials, and the workers received no protection until the law could be changed. Frequently, too, a qualifying phrase greatly limited the operation of a good law. For example, the law in one state required poisonous fumes generated "in the course of the manufacturing process" to be removed. While varnishing the interior of vats in a brewery two men died and one was totally blinded for life, due to inhaling the poisonous fumes of wood alcohol used in the varnish; but because varnishing vats is in the nature of repair work and does not come "in the course of the manufacturing process," the inspectors could not legally remedy the dangerous situation. It was necessary to wait an entire year (in most states it would have been two years) before the legislature convened and the

[1] Vandalia R. Co. *v.* Railroad Commission of Indiana, 182 Ind. 382, 101 N. E. 85 (1913). For a clear opinion on the delegation of legislative authority see Minneapolis, St. Paul and Sault Ste. Marie R. Co. *v.* Railroad Commission of Wisconsin, 136 Wis. 146, 116 N. W. 905 (1908).

[2] Vandalia R. Co. *v.* Public Service Commission of Indiana, 242 U. S. 255, 37 Sup. Ct. 93 (1916).

law could be amended. These illustrations indicate a common weakness of early safety and health laws in many states.

The second fundamental defect is *the absence of direct responsibility*. Many laws placed no obligation whatever upon an employer to safeguard danger points nor upon the employee to aid in maintaining safety except "in the discretion of the commissioner of labor," or unless "the commissioner so directs," or "if in the opinion of the commissioner of labor it is necessary." This type of legislation placed no duty upon the employer to provide nor upon the employee to maintain proper protection until required to do so by the inspector. No protective devices had to be provided until the inspector called and ordered them installed. Scarcely a state but has had laws of this character.

The third fundamental defect is *the absence of well-defined standards*. The old theory of factory inspection legislation assumed that the legislatures, often made up largely of lawyers and farmers, would define in the law the exact nature of protection to be provided in factory, workshop, or mine. But because of inadequate information, and possibly also because of fear of adverse court decisions, our lawmakers vaguely required merely that dangerous machinery be "sufficiently guarded," usually "where practicable," and left it to the poorly trained and poorly paid inspector to enforce these indefinite laws, usually "in his discretion." This discretionary power, when placed in the hands of uninformed officials, brought this method of law-making into disrepute among employers, employees, and the public.

The fourth fundamental defect is *the lack of responsiveness to changing industrial conditions*. When it had become apparent that many of the early laws were failing of their purpose because of the foregoing blemishes, there followed a comparatively brief period during which efforts were made to frame comprehensive, scientific provisions, free from "jokers" and loopholes, and to secure their passage by the legislatures. Perhaps the most noteworthy example of such legislation was the standard law enacted in several states providing for the protection of workers in the lead trades. In this instance, after careful investigation by the federal government supplemented by private studies and many conferences, a very specific bill was

drafted to apply to the various processes in the manufacture of lead salts, and the resulting legislation served a very useful educational purpose. In a few states also the laws undoubtedly hastened the efforts of employers to make their work-places sanitary. But it was found that some specific safeguards minutely prescribed in the statutes were very quickly out of date. In order that they might be superseded by improved devices or methods there was once more required the slow and expensive action of legislatures, which in most states might not be in session again for more than an entire year. The impracticability of embodying in statute law specific danger points and specific remedies became clear.

(2) *The Method of Administrative Orders*

Legislators themselves began to recognize the futility of attempting to formulate in the short and busy sessions, convening in most states only once in two years, proper protective measures. They saw that the proper persons to accomplish this work efficiently were those who had an opportunity to familiarize themselves with changing industrial conditions. Therefore, in several states, legislators decided that they would no longer attempt to enact laws specifying in detail what shall be done, but instead would ask that work-places be made safe. To carry out the will of the legislature they provided a commission to work out with employers and employees the best possible methods of protection. After public hearings, the methods agreed upon were issued by the commission in the form of administrative orders or regulations to apply state wide and to have the force of law. Here we find the very foundation of effective safety inspection work. The keynote is *cooperation*. The experience of the worker, the knowledge of the employer, and the critical constructive ability of the expert are all needed in the formation of effective standards of health and safety and in the enforcement of these standards.

This new method of regulating industrial conditions, through administrative orders cooperatively formulated and issued by a permanent commission, has resulted in several states in a progressive and accurate adjustment of factory inspection to the changing methods and new risks that accompany modern in-

dustry. Concerning this method a former chief factory inspector has said: "As a state inspector, my experience has demonstrated that the arbitrary imposition of rules of law will not, in itself, produce satisfactory standards for the safety and health of employees in factories, mills, and workshops. . . . The observations which I have made emphasize the importance of cooperation and of education of both parties to the labor contract as to what are ideal factory conditions. This cooperation must be brought about if substantial results with reference to safety standards are to be obtained through state inspection." Fortunately, scientific accident prevention has recently been brought into the foreground by the adoption of workmen's compensation acts, and it has quickened the movement for reorganization of administrative boards in many states.

No longer is it necessary in states like New York, Ohio, and Wisconsin, for example, to wait one or two years for a session of the legislature in order to submit proposals for the proper protection of the workers. No longer need specific rigid provisions be drafted into bills and thrust upon the bewildered attention of the legislators while temporarily in session at the state capital. The legislation has laid down the law in a broad way; the industrial commission, as rapidly as circumstances permit, may fill in the administrative detail. Under this new system the industry itself makes the laws for its own shop government. Employers and employees, with the aid of impartial experts, are learning through self-expression the importance and the practicability of the now popular motto, "Safety first." The prevention of industrial accidents and diseases, particularly when accompanied by social insurance, is becoming a matter of enlightened selfishness; the general and the specific statutory requirements of former years are being supplanted by scientific standards developed through administrative orders based on continuing investigations.[1]

[1] See chap. IX, "Administration."

CHAPTER VIII

SOCIAL INSURANCE

For most of the economic hazards of life there has been developed an appropriate method for the distribution of losses and the subsequent elimination of risks. Marine insurance, for the financial protection of those who send their goods down to the sea in ships, was the first to be developed on an extensive basis. Insurance against loss by fire is now a regularly accepted precaution in every community. By this common method of insuring against loss, each individual in the organized group is assured that in case of the destruction or damage of his property he will be reimbursed from a fund contributed little by little by the whole group. Insurance, accordingly, has been defined as an arrangement for distributing among many the losses sustained by a few.

By this thin spreading of individual losses over a large group, the man receiving an income from property destroyed by shipwreck or by fire is in a position to reinvest. Even more necessary than for the property owner is insurance for the workingman, whose ability to labor is his only asset and who is peculiarly liable to be deprived of his income. When the laborer, no matter how efficient he may be, has as a result of either individual or collective bargaining secured a job for himself even if at a wage and under hour limitations which are temporarily acceptable, his economic position is still precarious. He and his family are still face to face with exceptional economic risks, including the suffering and want following accident, illness, invalidity, premature or normal old age, premature death, and unemployment.

Peculiarly necessary, therefore, is this common arrangement for group or social action known as insurance, when those who suffer the losses are workingmen solely dependent for support upon their ability to labor. Such insurance may be developed by the initiative of individuals wishing to insure, or it may be

developed through legislation. When such insurance provision is made through legislation, it marks the adoption by society of a settled policy of cooperative action to distribute among a group the losses suffered by individuals due to their inability to work and thereby earn a livelihood. It is therefore natural to term this insurance *social insurance*.

While savings are sometimes urged as an alternative to workmen's social insurance, it is as true for the wage-earner as for the merchant, that the provision by each person of a reserve sufficient to meet the possible maximum loss is extravagant, requiring as it does that each person shall be able to meet from his individual savings the hazard which will fall upon only a small number. Far more economical is the institution of insurance whereby the individual sets aside only enough to meet the average loss when distributed throughout the group.

The most substantial reason why wage-earners do not voluntarily insure themselves against the risks of accident and illness, invalidity and old age, early death and unemployment, is insufficient income. Reliable information from conservative private and public reports amply confirms the statement that the average wage-earner with a family is not receiving pay for his labor sufficient "to secure the elements of a normal standard of living."[1] It is unreasonable to expect such wage-earners to provide against a possible future contingency at the sacrifice of present necessaries.

A further reason for the failure of the underpaid masses to insure themselves is indifference or lack of foresight concerning the problems of the future. Although thrift in the presence of subnormal living occasioned by low wages may at times become a positive social vice, provision for the future is on the whole necessary and beneficial. Furthermore, it is recognized that for millions of laborers saving will take place only under a distinct incentive. This "enforced saving" against the inevitable rainy day in the life of the workingman is most effectively brought about through the periodical collection of dues or premiums for the support of the various forms of social insurance. It has been discovered, moreover, that community of interest in directly bearing the financial cost of insurance

[1] See chap. IV, "The Minimum Wage."

furnishes a kind of cooperative pressure on employers[1] which can be utilized effectively in the elimination of risks in so far as they are preventable. The rapid development of the "safety first" movement which followed closely the enactment of workmen's compensation laws is sufficient evidence of the preventive power of social insurance.

There is a growing recognition, also, that industry is a contributing factor to the hazards of life among wage-earners. For example, industry is responsible for work accidents, and is a contributing factor in illness. To the extent that men are idle because of industrial irregularities, industry and not the worker is responsible for unemployment. Social insurance plans generally recognize industry's share in creating hazards, the burden of which traditionally has rested upon the wage-earners, and aim to distribute the cost in accordance with the responsibility. By this means social insurance not only spreads out the cost among wage-earners as a group, but also distributes it between employers and workers. Experience with voluntary insurance has demonstrated that the only method of making insurance universal among wage-earners, and of having employers assume their share of the cost, is to make it compulsory.

Thus, although beginning in each case with some form of private organization, there has been developed, to meet the peculiar risks which modern industrial workers must endure, a special kind of insurance, depending for its inclusiveness, its financial security, its economical administration, and its effectiveness in reducing the cause of each particular evil, upon an element of social compulsion.

Various countries have social insurance against accident and occupational disease, against sickness, against old age and invalidity, against death and the consequent dependency of widows and orphans, and finally against unemployment. In all of this social action an important element of self-defense is not lacking. It is clearly recognized that insurance is the most effective device for protecting society itself against the pressure of incapacitated individuals who otherwise would be thrown upon the community for maintenance. While attempting to avoid the demoralizing round of charity, by means of

[1] See chap. IX, "Administration."

an insurance program, there is consciously promoted a system of individual care aimed at the scientific promotion of the worker's efficiency.

1. Industrial Accident Insurance

The first kind of social insurance to be developed extensively through legislation in the United States, probably because of the comparative ease of recognizing both the industrial cause and the far-reaching extent of the evil, is insurance against occupational accidents and diseases, or as it is more popularly termed in this country, workmen's compensation.

Compensation to the injured workman is based upon the theory that the consumer of economic goods should bear all the expenses incurred in the production of such goods. Among those expenses must be included the pecuniary losses from deaths and injuries occurring in the regular course of production. Wages lost, medical attendance, and burial expenses, in case of accidental injury or death are all losses which should be considered as a part of the expense of production. If these losses are to be borne by the workman, he indirectly carries part of the expense of production. In order to avoid this, the expense of work accidents, it is now generally agreed, should be treated like all other expenses of production; it should be borne by the employer in the first instance, and be shifted by him, in the form of increased prices, upon the consumer of those goods in the production of which the injuries were sustained.

Our present compensation laws have passed through a long period of development, and have many precedents. As mining and navigation developed in Europe, the workmen of these two industries formed, in the eighteenth century and sometimes even earlier, mutual accident insurance associations for their own protection. The above industries were the pioneers in forming such mutual associations largely because each man was greatly dependent for his safety upon the care of his fellow workmen.[1]

In the handicraft production of the Middle Ages, not only

[1] United States Commissioner of Labor, *Twenty-fourth Annual Report*, 1909, "Workmen's Insurance and Compensation Systems in Europe," Vol. I, p. 977.

were the workmen very closely related, but there was also a close connection between the master and his servants. Manufacturing in the gilds was conducted on a small scale, and each master had but few helpers. Accidents were not numerous because machinery was not developed, and production was carried on at low speed. When injuries did occur, the master, at least theoretically, took care of the disabled.

This personal relation of employer and employee to a great extent disappears with the development of large scale industry. As the number of employees to each establishment increased, the owner could no longer give them his personal attention and care. The workman gained more personal freedom, but lost the aid of his employer in case of sickness and accident. To recover damages he now had to seek relief by legal proceedings, either under the common law or under statutes establishing employers' liability; he had to bring suit against his master.

(1) *Rules of Employers' Liability*

The conditions under which the injured could recover in court were based upon a series of rules which included (*a*) the duties of the employer; (*b*) the burden of occupational risks; (*c*) the fellow servant rule; (*d*) contributory negligence; and (*e*) assumption of risks.[1]

a. Duties of the Employer. It was considered the duty of the employer to use reasonable care in protecting his employees against injury while engaged in his service.[2] Numerous court decisions defined this obligation of the employer in considerable detail. He was required to provide a safe place to work, to furnish safe tools and appliances, to conduct his business in a safe manner, and to select competent fellow servants. Reasonable care required the guarding of only those dangerous conditions of which the employer had knowledge or of which by the exercise of reasonable care he should have had knowledge.[3] It

[1] See E. H. Downey, *History of Work Accident Indemnity*, 1912, p. 17.
[2] Priestly *v.* Fowler, 3 Meeson and Welsby, 1, 6 (England, 1837).
[3] Magee *v.* Chicago & Northwestern R. Co., 82 Iowa 249, 48 N. W. 92 (1891).

is held by many experts that no matter how great caution is taken against accidents, many mishaps will occur which result in death or injury to the workman. Establishments in which every machine is guarded and where safety work is carried on ably and conscientiously, nevertheless, it is declared, will have numerous accidents. These injuries are said to be due to the inherent hazards of the industry; nothing will prevent them.

b. Burden of Occupational Risks. It is to these accidents that the principle of the burden of occupational risks applies. The employee assumes the ordinary risks of the employment in which he engages. In an early American case the court stated that: "The general rule, resulting from considerations as well of justice as of policy, is that he who engages in the employment of another for the performance of specified duties and services, for compensation takes upon himself the natural and ordinary risks and perils incident to the performance of such services, and in legal presumption the wage is adjusted accordingly."[1] Freeing the employer from liability thus left a vast number of injuries and deaths as a direct burden upon the workmen and their dependents, with no chance of obtaining damages.

c. Fellow Servant Rule. The rules holding the employer responsible for exercising reasonable care in protecting his employees, and exempting him from liability for inherent occupational hazards, were recognized uniformly by the courts. The third, or fellow servant rule, involved more serious difficulty. The usual rule of law is that a master is responsible for the negligence or carelessness of his servants in the course of their duties. Since very many accidents to workmen can be traced to the carelessness or negligence of a co-employee, the application of the rule as between fellow servants was felt to be harsh.[2] Exception to the general rule was first taken by the English Exchequer Court in 1837 in the case of Priestly *v.* Fowler.[3] A butcher driver's helper was injured by the break-

[1] Farwell *v.* Boston & W. R. Co., 4 Metcalf (Mass.) 49, 57 (1842).

[2] Consequently the courts, declare Shearman and Redfield in *The Law of Negligence,* "boldly invented an exception to the general rule of masters' liability, by which servants were deprived of its protection." (P. *vi.*)

[3] Priestly *v.* Fowler, 3 Meeson and Welsby, 1, 6 (England, 1837).

ing down of the wagon. He brought suit against the butcher for damages on the grounds that the wagon was insufficient for its purpose, and that it had been overloaded. Damages were denied on the ground that if they were allowed the master's liability would extend very far. He might be held liable to the footman who was injured by a defective wagon due to the negligence of the coachmaker, or to the servant for the negligence of the cook in not properly cleaning copper vessels in the kitchen. Besides, the opinion states, the driver's helper "must have known as well as his master, and probably better," that the wagon was insufficient, or overloaded, and might have refused to use it.

A similar decision was rendered four years later in America, without mentioning the Priestly case. In this case [1] damages were denied a locomotive fireman who had been injured owing to the negligence of the engineer under whom he worked. It was held that the railroad company was not a guarantor to one employee against the negligence of other employees; that the fireman should have been aware of the perils of his employment, and that the plaintiff was paid for his labor and for the danger to which he was exposed.

In 1842 Chief Justice Shaw of Massachusetts gave the fellow servant rule a definite formulation and a wide application in deciding the case of Farwell *v.* Boston and Worcester Railroad Corporation [2] in favor of the defendant. An engineer brought action for damages because he had lost a leg due to the switchman's neglecting to change a switch. Justice Shaw argued that any servant might reasonably anticipate that his associates at times will be careless and negligent; that this is one of the risks of employment, to which, in legal presumption, the compensation is adjusted. Want of care can be anticipated as much as a coupling out of repair. The brakeman can guard against one as much as against the other—being powerless against both.

This chain of reasoning was accepted as sound and conclusive, and numerous later decisions were based on it. It relieved the master from all liability for an injury sustained on account of the negligence or carelessness of a fellow servant

[1] Murray *v.* South Carolina R. Co., 1 McMullan 385 (1841).
[2] Farwell *v.* Boston and W. R. Co., 4 Metcalf (Mass.) 49 (1842).

provided the master had exercised reasonable care in his selection.[1]

d. Contributory Negligence. According to the doctrine of contributory negligence a plaintiff for damages for an injury occasioned by the fault of the employer, in order to win his case, must establish his own freedom from negligence. Any negligence on the part of the injured, no matter how slight in comparison with that of the employer, will cause him to lose the suit, if without that negligence the accident would not have occurred. Such negligence exists if the employee continues to work under conditions which are apparently dangerous and which a reasonably prudent man would avoid, or if his own want of due care contributed as a proximate cause to the accident.[2]

e. Assumption of Risk. As a last resort to free himself from liability the employer could set up the defense that the injured workman had "assumed" the risk. The risk referred to in this connection is not the ordinary inherent hazard of the occupation, but an abnormal danger of which the employee was fully aware, but in spite of which he continued to work. The principle of assumption of risk, however, has been modified in several states by statutes in favor of the workman. This is particularly true in case of children and of railroad workers.

It can be seen easily that with these last four rules, all aiming to relieve the employer of liability, it is extremely difficult for the injured workman to win a suit for damages. In order to gain a favorable verdict he must be able to show that the injury was the immediate result of the employer's failure to exercise ordinary care, and that it was not contributed to in any degree by his own want of ordinary care. Moreover, he cannot recover if the accident was due to an ordinary hazard of the employment, or to the negligence of a fellow workman, or to a defect due to the negligence of the employer that was known to the injured and that created a condition under which a prudent man would not have continued to work.

[1] Seymour D. Thompson, *Commentaries on the Law of Negligence*, 1901-1905, Vol. IV, p. 270, Sec. 4048.

[2] Butterfield *v.* Forester, 11 East 60 (England, 1809); Haley *v.* Chicago & Northwestern R. Co., 21 Iowa 15 (1866).

Satisfactory statistics are not available to show definitely the proportion of injured men who received indemnity under these liability doctrines. From the meager investigations which have been made, however, it may be concluded that but few recovered damages, and that the amounts were in many cases shamefully small. Under the liability system insurance companies have engaged in carrying the employer's risk. They have expert legal advice, and are able to contest wage-earners' claims even more effectively than the average employer. It is true that numerous laws have been enacted in most countries attempting to place more liability upon the employer. Germany passed a law, wide in scope, to that effect in 1871, and Great Britain followed in 1880. The first American employers' liability law was passed in Alabama in 1885, followed by Massachusetts in 1887. Among the best of these laws was the federal statute establishing the liability of railroad companies for injuries to their employees.[1] Notwithstanding all attempted legal regulation, the position of the injured workman was not much improved. To recover he had to go to the courts and had to meet the strong legal opposition of insurance companies or of his employer.

Not only are the injured man's chances to win his case very small and the machinery too slow to bring relief when it is most needed, but the system is extremely wasteful. The following figures taken from the records of ten insurance companies for a three-year period will substantiate this statement:[2]

Collected from employers	$23,523,585
Absorbed by companies in profits and expenses	14,963,790
Received by plaintiffs' attorneys (approximately)	1,900,000
Received by injured workmen or their dependents (approximately)	6,660,000

Of every $100 paid by the employer in premiums, but $28 reached the workman, and that amount only after a long legal action in many instances. In certain leading industrial states it was found that it required on the average from two to six years to reach final judgment in a fatal accident case under employers' liability.[3]

[1] United States, Acts 1907-1908, C. 149.

[2] New York Commission on Employers' Liability and Other Matters, *First Report*, 1910, pp. 29-31.

[3] E. H. Downey, *History of Work Accident Indemnity in Iowa*, p. 79.

Without question but a small proportion of cases are taken to court, because the injured knows an attempted recovery is but a gamble, with all odds against him. As a rule the insurance companies act as if their duty under employers' liability is not to compensate the injured, but to defeat their claims.

(2) *Beginnings of Industrial Accident Insurance*

The credit for first realizing that in order to furnish certain and adequate relief to the injured workman it was necessary to provide insurance for all laborers, and for all accidents, must be given to Germany. The original bill to this effect was introduced in the Reichstag in 1881, but failed to be adopted. The following year a second bill was introduced providing for sickness and accident insurance. The sickness clauses, including provisions for accident compensation during the first thirteen weeks of disability, were passed in 1883, but the accident insurance was again defeated. Finally, in 1884 a bill providing compulsory insurance against accidents was passed which became effective in October, 1885.

a. German System. The German law has been frequently amended and extended in scope, and to-day practically every industry of that country is included.

Under the German system the compensation of the injured workman for the first thirteen weeks of disability comes from the sick funds. During the first four weeks he receives 50 per cent, and from the fifth to the thirteenth week, inclusive, 66 2/3 per cent of his wages, and the latter proportion is continued from the accident funds until temporary disability ceases. The sick funds are maintained by contributions two-thirds of which are paid by the workmen and one-third by the employers. From the fifth to the thirteenth week the additional 16 2/3 per cent of wages is paid by the employer in whose establishment the accident occurs.

In addition to the monetary benefit, free medical attendance, medicines, and appliances are provided. During the first thirteen weeks these costs are paid by the sick fund, and after that by the insurance associations. To bring about a speedy recovery, and to avoid large pensions which would result if the injured were permanently disabled, the insurance associations

have established numerous hospitals, convalescent homes, and similar institutions.

In case of permanent total disability the injured workman receives 66 2/3 per cent of wages for life. For permanent partial disablement he receives a pension in proportion to the degree of disablement. In computing the amount, the nature of his occupation and training are taken into consideration; for example, the loss of a finger would affect a linotype operator much more seriously than a foundry laborer, and accordingly he would receive a larger pension.

If the accident results in death, a funeral benefit is paid in all cases, whether the deceased has left dependents entitled to survivors' benefits or not. A liberal pension is provided for surviving dependents.

The most important branch of the administrative machinery of the German compulsory insurance law is the mutual trade associations. Employers in related trades organize their own associations, fix their own rates, and enforce their own safety requirements, and to the special facilities which this method affords is mainly due the conspicuous success of the German system in promoting accident prevention. Each *Berufsgenossenschaft,* or trade association, has its own constitution, but is closely regulated by the state and the federal insurance office. Subordinate to the federal insurance office is a system of local and superior insurance offices, each composed of public officials, with associates elected by and from employers and employees, respectively. Judicial and administrative matters passed upon by the local office may be appealed subject to certain restrictions, to the superior office, and from that to the imperial office, whose decision is usually final.

b. Methods in Other Countries. The German insurance system has been described in some detail because it was the first to be introduced, is one of the most efficient, and affords data based on experience from which, in various degrees, other countries gleaned hints to be utilized in drafting their own acts.

In 1897 Great Britain passed a compensation law which was frequently amended and amplified in scope until in its present form it covers all employments and all injuries arising out of and in the course of employment.

The principle of industrial accident insurance, or workmen's compensation as it is generally called, spread rapidly and is now so generally accepted throughout the world that by 1925 over seventy foreign countries and states, including practically all of any industrial importance, had laws of this character.[1]

The tendency in these laws is distinctly toward constantly broadening coverage though there are still many limitations based on the supposed degree of hazard of the work or the number of persons employed. The waiting periods, during which no compensation is payable, are fixed at from three to seven days in the great majority of laws. Payments for total disability range from 33 per cent of wages in Peru to 100 per cent in Russia[2] and the Serb-Croat-Slovene Kingdom.[3] A few laws allow 70, 75, or 80 per cent of wages. Except in some half-dozen cases medical care is provided in addition to cash compensation, occasionally through a cooperative arrangement with the health insurance scheme. To secure payment of benefits employers are usually required to deposit in a special guarantee fund or to insure their risk, often in institutions prescribed and supervised or managed by the state.

c. Inclusion of Occupational Diseases. Though workmen's compensation laws originally concerned themselves only with mechanical injuries, such as cuts, broken bones, or loss of members, it soon became obvious that elementary justice required the extension of similar relief to the victims of specific industrial diseases contracted in the course of employment. The first country to take this forward step was Great Britain, which in the act of 1906 included for compensation a schedule

[1] A study on *Compensation for Industrial Accidents* published by the International Labor Office in 1925 (Studies and Reports, Series M, No. 2) analyzes the following foreign laws: Argentina, six Australian states, Austria, Belgium, Bolivia, Brazil, Bulgaria, nine Canadian provinces, Chile, China, Colombia, Cuba, Czecho-Slovakia, Denmark, Ecuador, Esthonia, Finland, France, Germany, Great Britain, Greece, Guatemala, Hungary, India, Irish Free State, Italy, Japan, Latvia, Lithuania, Luxemburg, Netherlands, Newfoundland, New Zealand, Norway, Panama, Peru, Poland, Portugal, Roumania, Russia, Salvador, Serb-Croat-Slovene Kingdom, South Africa, Spain, Sweden, Switzerland, Uruguay. In addition fifteen Mexican states have compensation acts which are described in the February, 1924, issue of the *Monthly Labor Review* of the United States Department of Labor.

[2] Temporary disability only.

[3] Permanent disability only.

of six of the commonest occupational maladies, and provided for the extension of this schedule by the Secretary of State. It has been extended from time to time and after twenty years had grown to more than five times its original length. By 1925 occupational diseases were compensated to a greater or lesser extent in seventeen foreign countries, five Australian states, six Canadian provinces, and fifteen Mexican states.[1] Most of these countries still follow the British scheme and include under their compensation acts only certain specifically listed diseases, frequently, however, permitting the administrative authorities to extend the original list and, in some cases, leaving the formulation of the list entirely to such authorities. Great Britain and several of her dominions also grant compensation for certain respiratory diseases under entirely separate acts.[2]

A few countries provide general coverage for all occupational diseases. The greater prevalence of "list laws" may be due in part to the existence of health insurance legislation in most of the industrially important countries. In the United States, in the absence of health insurance, experience in a dozen states appears to indicate the desirability of all-inclusive coverage of occupational disease disabilities in preference to the limited schedule plan.

(3) *Compensation Legislation in the United States*

As in other forms of social insurance, to be considered later, the United States acted much later than European countries to provide for the injured workman. The first legislation providing for stated benefits without suit or proof of negligence was enacted in Maryland in 1902, in the form of a co-

[1] A study of *Compensation for Occupational Diseases* published by the International Labor Office in 1925 (Studies and Reports, Series M, No. 3) analyzes the occupational disease compensation provisions of Argentina, five Australian states, Brazil, six Canadian provinces, Ecuador, France, Germany, Great Britain, India, Italy, Japan, fifteen Mexican states, New Zealand, Portugal, Russia, the Serb-Croat-Slovene Kingdom, South Africa, Spain, and Switzerland.

[2] Great Britain, Silicosis Act 1918; New South Wales, Silicosis Act 1920, and Broken Hill (tuberculosis and pneumoconiosis) Act, 1920; West Australia, Miners' Phthisis Act 1923; New Zealand, Miners' Phthisis Act 1915; South Africa, Miners' Phthisis Act 1919.

operative insurance law.[1] The law was narrow in scope, covering only a small specific list of industries, and was declared unconstitutional in 1904.[2] In 1908 Congress enacted a law granting to certain employees of the United States the right to compensation for injuries sustained in the course of employment. In 1910 an act was passed in Montana providing for the maintenance of a state cooperative insurance fund for miners and laborers in and about mines. This also was declared unconstitutional.[3]

The first law of general application was passed by New York in 1910. It was made elective for most occupations, but compulsory for an enumerated list of hazardous employments. This statute was declared unconstitutional in 1911 in the case of Ives. *v.* South Buffalo Railway Company,[4] but an amendment to the constitution made possible the enactment of a compulsory law in 1914. Other states followed. By 1920 compensation laws were enacted in forty-three[5] states, Alaska, Hawaii, and Porto Rico; and Congress, in 1916, replaced the limited act of 1908 by a compensation law covering all federal civilian employees. The Missouri act was twice repealed and reenacted without going into effect owing to peculiar political conditions; but no new states passed acts between 1920 and 1926.

In the early days one of the main obstacles to the enactment of effective compensation laws was the question of constitutionality. It was maintained that to require an employer to pay damages for an accident for which he was not to blame was taking property without due process of law, that both employer and employee were deprived of the right of trial by jury, and that the employer was charged with liability without fault.

In 1917, however, the constitutionality of the chief types

[1] United States Bureau of Labor Statistics, *Bulletin No. 126*, p. 30.
[2] Franklin *v.* United Railways and Electric Co. of Baltimore, Baltimore Common Pleas Ct., April 27, 1904. Summarized in United States Bureau of Labor, *Bulletin No. 57*, 1905, pp. 689, 690.
[3] Cunningham *v.* Northwestern Improvement Co., 44 Mont. 180, 119 Pac. 554 (1911).
[4] Ives *v.* South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431 (1911).
[5] All except Arkansas, Florida, Mississippi, North Carolina, and South Carolina.

of compensation laws was affirmed by the United States Supreme Court in three far-reaching decisions involving the New York, Iowa, and Washington laws.[1] The principal constitutional question under the New York compulsory law was whether the statute, by requiring the employer to make fixed payments for his employees' industrial injuries, deprived him of any rights of liberty and property guaranteed him by the fourteenth amendment to the federal Constitution. The Supreme Court ruled unanimously that the enactment of laws compensating for industrial accidents tended to promote the public welfare and was therefore within the police power of the state, saying: "We recognize that the legislation under review does measurably limit the freedom of employer and employee to agree respecting the terms of employment, and that it cannot be supported except on the ground that it is a reasonable exercise of the police power of the state. In our opinion it is fairly supportable upon that ground. And for this reason: The subject-matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare. 'The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer.'[2]" The Iowa elective law was sustained by a reference to the New York case.

The Washington law presented a different issue. In that state employers in specified hazardous occupations are required to pay workmen's compensation premiums to a state insurance fund out of which injured workmen are compensated. In determining whether such enforced contributions were a "fair and reasonable exertion of governmental power" the court thought it "proper to consider: (1) Whether the main object of the legislation is, or reasonably may be deemed to be, of general and public moment, rather than of private and particular interest, so as to furnish a just occasion for such inter-

[1] New York Central R. Co. *v.* White, 243 U. S. 188, 37 Sup. Ct. 247 (1917); Hawkins *v.* Bleakly, 243 U. S. 210, 37 Sup. Ct. 255 (1917); Mountain Timber Co. *v.* Washington, 243 U. S. 219, 37 Sup. Ct. 260 (1917).

[2] Holden *v.* Hardy, 169 U. S. 366, 397, 18 Sup. Ct. 383 (1898).

ference with personal liberty and the right of acquiring property as necessarily must result from carrying it into effect. (2) Whether the charges imposed upon employers are reasonable in amount, or, on the other hand, so burdensome as to be manifestly oppressive. And (3) whether the burden is fairly distributed, having regard to the causes that give rise to the need for the legislation."

In regard to the first point the court deemed the considerations advanced in the New York decision "sufficient to support the state of Washington in concluding that the matter of compensation for accidental injuries with resulting loss of life or earning capacity of men employed in hazardous occupations is of sufficient public moment to justify making the entire matter of compensation a public concern, to be administered through state agencies."

Upon the second point the court said: "No particular contention is made that the compensation allowed is unduly large; and it is evident that unless it be so the corresponding burden upon the industry cannot be regarded as excessive if the state is at liberty to impose the entire burden upon the industry."

On the third question, of fair distribution, the court found that: "The application of a proper percentage to the pay roll of the industry cannot be deemed an arbitrary adjustment, in view of the legislative declaration that it is 'deemed the most accurate method of equitable distribution of burden in proportion to relative hazard.' . . . As further rebutting the suggestion that the imposition is exorbitant or arbitrary, we should accept the declaration of intent that the fund shall ultimately become neither more nor less than self-supporting, and that the rates are subject to future adjustment by the legislature and the classifications to rearrangement according to experience, as plain evidence of an intelligent effort to limit the burden to the requirements of each industry."

Although the industry involved in the case, logging, is clearly hazardous, the court took occasion to demolish the objection that the act includes non-hazardous occupations, saying: "The question whether any of the industries enumerated in section four is non-hazardous will be proved by experience, and the provisions of the act themselves give sufficient assurance that

if in any industry there be no accident there will be no assessment, unless for expenses of administration."

But most indicative of the present attitude of the United States Supreme Court toward workmen's compensation legislation is the following statement: "The act cannot be deemed oppressive to any class of occupation, provided the scale of compensation is reasonable, unless the loss of human life and limb is found in experience to be so great that if charged to the industry it leaves no sufficient margin for reasonable profits. But certainly, if any industry involves so great a human wastage as to leave no fair profit beyond it, the state is at liberty, in the interest of the safety and welfare of its people, to prohibit such an industry altogether."

Owing, however, to the adverse decision on the early New York compulsory law in the Ives case, most American compensation acts have been made elective. That is, the employer is given his choice of accepting the act or of operating under the liability law; but as an encouragement to the employer to elect compensation, the old liability defenses of fellow servant's fault, contributory negligence, and assumption of risk, discussed earlier in this chapter, are abrogated or greatly modified. This is frequently called by its opponents "club" legislation, but the courts have sustained it as a valid exercise of legislative power for a public end.

The relief which a compensation act gives to the injured workman depends upon (*a*) the scope of the law, (*b*) the scale of compensation, (*c*) the provisions for rehabilitation, (*d*) the method of administration, and (*e*) the security for payment of awards. A liberal law, that is, one which provides a high rate of indemnity, will be of little service unless it applies to many cases of accidents, and conversely a law covering many or all cases will not accomplish what is intended unless the benefits provided are reasonably high. Again, the practical results obtained, no matter how liberal the law, will be seriously impaired unless means are provided for effective administration and for securing the actual payment to the injured worker or to his dependents of the amount awarded.

a. Scope of Laws. A compensation system should apply to all employments and cover all injuries. In the early days of the movement, however, partly because of administrative

difficulties and partly because of the incompleteness of public education on the subject, the exclusion of certain classes of workers and of certain sorts of injuries was found temporarily advisable.

(*a*) *Employments Included.* Nine main groups of workers are commonly excluded from American state compensation laws. In the probable order of their importance these are: (1) Employees in supposedly non-hazardous occupations; (2) agricultural laborers; (3) domestic servants; (4) employees in interstate commerce; (5) workmen in establishments employing fewer than a given number of persons; (6) public employees; (7) casual laborers; (8) those not engaged in the regular course of the employer's business; and (9) those in employments not conducted for gain. As a result of these exclusions the proportion of employees protected in the various states in 1920 ranged from 99.8 per cent in New Jersey to only 20.5 per cent in Porto Rico.[1] Altogether it was officially estimated at the end of 1917, when compensation laws existed in forty states and territories, that there were in these states and territories alone over 8,500,000 American wage-earners, or nearly 40 per cent of the total number within the area, who could "not possibly be covered under any existing compensation act."[2]

Of the various exclusions mentioned, that of workers in "non-hazardous" occupations is particularly indefensible. A laborer may be killed no matter how non-hazardous the occupation seems. As has often been stated, it is that industry in which a person is injured which is hazardous. The exclusion of casual workers has resulted in much confusion. The meaning of the term is not clear, and the various courts and commissions differ in construing it. Longshoremen, for example, who work only when a boat is to be loaded or unloaded, have been held not to be casual employees, as the irregularity of their employment is inherent in shipping by sea. On the other hand, waiters and teamsters, hired for particular jobs lasting only a day or thereabouts, have been

[1] United States Bureau of Labor Statistics, *Monthly Labor Review*, January, 1920, p. 237.

[2] United States Bureau of Labor Statistics, *Bulletin No. 240*, "Comparison of Workmen's Compensation Laws of the United States up to December 31, 1917," Carl Hookstadt, p. 29.

held to be casuals. One state[1] has interpreted casual employment to mean all lasting less than a week. Exemption of establishments with a small number of employees is based on the theory that in such work-places the accident risk is less. When, however, the exemption is extended to all establishments with fewer than sixteen employees,[2] very few are left to benefit by the change from employers' liability to workmen's compensation. Employees in interstate commerce, numbering fully 1,300,000, do not come under state compensation laws because Congress took jurisdiction when it enacted its employers' liability law covering this field. By a five to four decision the United States Supreme Court held that the work of longshoremen was "maritime in nature," and that therefore they came under federal admiralty jurisdiction and were not covered by state workmen's compensation laws.[3] Twice Congress attempted to meet these objections and remedy the desperate condition of the longshoremen by specifically reserving to them the protection of state compensation laws.[4] These efforts, despite their characterization as "statesmenlike" by the minority justices, were held to be beyond the authority of Congress in that such power delegated to the states would interfere with the proper harmony and uniformity of the maritime law.[5] Early in 1926 a federal compensation bill for the protection of longshoremen and harbor workers when injured on board the vessel was being urged in Congress.

(*b*) *Injuries Included.* All injuries sustained in the course of employment should be compensated, except those occasioned by the wilful intention of the employee to bring about the injury or death of himself or his fellow workmen. These are clearly not a hazard of the industry, and should not be compensated. Some states also exclude accidents caused in part by the intoxication of the injured employee. Such exclusion is likely, however, to cause litigation over the question of whether or not the employee was "intoxicated"; and since

[1] California.
[2] Alabama, Laws 1919, No. 245.
[3] Southern Pacific Co. *v.* Jensen, 244 U. S. 205, 37 Sup. Ct. 525 (1917).
[4] Public 82, Sixty-fifth Congress, First Session, and Public 239, Sixty-seventh Congress, Second Session.
[5] Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149, 40 Sup. Ct. 438 (1920), and State of Washington *v.* Dawson & Co., 264 U. S. 219, 44 Sup. Ct. 302 (1924).

compensation legislation aims at preventing litigation and securing prompt aid, limitations of this sort are to be deprecated. Moreover, the safety of fellow workmen requires that the employer be discouraged from hiring men who are prone to intoxication, and an excellent method of accomplishing this result is to make subject to compensation all accidents occurring to such employees.

In order to induce the workman to make use of the safety appliances supplied by his employer, the compensation may be reduced if he wilfully fails to use such guards and appliances. On the other hand, the compensation should be increased in the same proportion if the employer fails to obey any safety law or to provide the proper devices, and the laws of some states include penalties of this nature. In Wisconsin, for example, the injured receives an increase of 15 per cent in compensation if the employer did not observe the safety laws, but, on the other hand, his compensation is reduced 15 per cent if he fails to use safeguards when they are provided.[1]

(*c*) *Occupational Diseases.* Inclusion of occupational diseases in workmen's compensation laws is much discussed in America. Industry is recognized as the contributing cause in numerous disease cases and as practically the sole cause in others. In the absence of health insurance legislation in this country, workmen's compensation laws furnish the only relief for these injuries. While it is neither practical nor desirable for compensation laws to cover all sickness, industry should be charged with those disease disabilities for which it is clearly responsible. More than a dozen [2] American laws provide occupational disease compensation. Approximately half cover only specified diseases, such as lead poisoning, anthrax, and caisson disease, while others compensate all disabilities clearly caused by the employment. The administrative commission determines in each case whether the industry is responsible. These are preferable to the "list laws" since, with ever-changing industrial processes lists soon become incomplete, and constant legislative revision is impractical. The broadest occupational

[1] For reference to double and treble accident compensation as an incentive to compliance with child labor laws, see p. 373.

[2] By 1926, California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Ohio, Porto Rico, Wisconsin, Federal.

disease coverage, American experience shows, adds not over 2 per cent to the cost of the law.[1]

b. Scale of Compensation. The object of indemnity is twofold—first and more important, to restore the workman's earning power as completely and quickly as possible, so that society will not be burdened with disabled human beings; and second, to provide for the support of the family while the surgical and medical treatment is being given. To effect the former it is imperative that he receive efficient medical and surgical care.

(*a*) *Medical Attendance.* The importance of medical attendance is often underestimated. Proper, immediate care tends not only to reduce the period of disability, but also to diminish the number of serious, perhaps permanent, complications. Lifelong impairment of earning capacity frequently results from improper care of fractures; infections or "blood poisoning" could be almost eliminated by efficient immediate attention. Of 721 infections reported to the Wisconsin Industrial Commission during a two-year period, about 600 were the result of small scratches and breaks of the skin.[2] These cases represented a total of 12,500 working days lost, and, under the Wisconsin law, a compensation of about $40,000. Had proper care been provided, this large loss of time and money could have been avoided.

Full medical aid at the employer's cost is of benefit to the workman in that it relieves his suffering, reduces the period of disability, and permits his return to full earning capacity in shorter time; at the same time, in virtue of this fact, it is beneficial to the employer inasmuch as the amount of compensation is reduced. If the wage-earner is required to pay for his own medical treatment, he will not receive as good care. The average laborer has little means to pay for good service, even when earning full wages. When disabled and receiving only a part of his wages, he is even less able to provide himself with proper care.

The amount of medical aid, in proportion to the total indemnity, is large. In experience gathered by the National Council

[1] "Occupational Disease Compensation," by John B. Andrews, United States Bureau of Labor Statistics, *Bulletin No. 389*, pp. 42-46.
[2] Industrial Commission of Wisconsin, *Shop Bulletin, No. 5.*

on Compensation Insurance[1] from thirty states for the three years 1918-1920 inclusive, medical care represented 20.7 per cent of the compensation payments or $48,133,542, out of a total of $232,374,728. Thus it is evident that medical care is a very important factor in a compensation law and should not be underestimated. It is of such importance to the welfare of the injured and their dependents that the law should require the giving of full free medical attendance, medicines and appliances, and should impose a limit neither in time nor in amount. Where such a policy has been followed, besides vastly benefiting the injured it has achieved marvelous results in preventing permanent impairment.

America is gradually waking up to the economy of liberality in this respect, but while all states provide for medical care, the majority of them still impose either a time limit, an amount limit, or both. The time limits range from two weeks to one year, while the amount varies from $100 to $800. An increasing number of states, however, are giving their administrative boards discretion to increase the period or amount.

It is evident that in those states having low limits a large part of the medical care must be borne by the injured. The amounts may be sufficient to take care of the less serious injuries, but in case of accidents resulting in fractures, dislocations, and serious sprains a large part of the burden falls on the workman himself.

(*b*) *Waiting Period.* It is customary, in compensation laws, to provide no monetary benefits for the first few days of disability. The intervening time is known as the "waiting period" and its object is to prevent malingering; that is, to prevent a slightly injured man from pretending inability to work, with the expectation of drawing part of his wages. On the other hand, if the period is too long it will prove a hardship to the injured. The danger of malingering, moreover, is greatly exaggerated by many inexperienced persons. Official commissions skilled in administration of workmen's compensation laws agree that a short waiting period is ample to check this tendency and that the reduction of originally long waiting periods in the laws of many important industrial states has

[1] Michelbacher and Nial, *Workmen's Compensation Insurance*, 1925, Appendix III, p. 380.

resulted, in practice, in no increase in malingering. The proper length of the period is hard to determine and varies with individual cases, but it seems that three days is sufficient.[1] This view is upheld by actual accident experience. Studies of accidents made by Dr. I. M. Rubinow and by the Wisconsin Industrial Commission show that about three-quarters of all accidents requiring medical attendance terminate within two weeks, and that two-thirds terminate within one week. Of these two-thirds, one-half cause no disability other than on the day when the accident occurs, and one-quarter cause disability lasting from one to three days, while only one-quarter result in disability extending over more than three days. For example, a total of 36,000 accidents requiring medical attendance would be distributed about as follows:

Length of Disability	*Number of Accidents*	*Per Cent*
Two weeks and more	9,000	25
One week or more, but less than two weeks	3,000	8⅓
Three days or more, but less than one week	6,000	16⅔
More than one, but less than three days	6,000	16⅔
One day (day of accident)	12,000	33⅓
Total	36,000	100

Hence, if the waiting period is two weeks, only about a quarter, and if it is seven days, only one-third, of the injured receive compensation. By reducing the period to three days, one-half of those injured would be entitled to benefits.

In a small number of states there is no waiting period and compensation begins on the day of accident. More than three-fourths of the states set a period of seven days or less, and the others provide for from ten to fourteen days. In some, however, compensation is paid from the day of injury in case disability continues for more than a specified period, as two, four, or eight weeks. Since the large majority of accidents cause disability which terminates in a short time, it is important that the period during which no compensation is paid be made short.

(*c*) *Compensation for Total Disability.* Injuries for which

[1] The American Association for Labor Legislation recommends a waiting period of not less than three nor more than seven days. See its *Standards for Workmen's Compensation Laws.*

compensation is paid may be divided on the basis of their severity into three large groups; namely, (1) death; (2) partial disability or impairment of earning capacity such as the amputation or loss of function of a member; and (3) total disability of either a permanent or a temporary nature. The vast majority of accidents result in total temporary disability.

The best American laws, of which the acts of North Dakota and Ohio, and the federal statute covering federal employees, are examples, award to the disabled workman 66 2/3 per cent of wages (within certain limits) during the entire period of disability. In permanent cases, of course, this means benefits for life. The limits referred to are in North Dakota a maximum payment of $20 a week and a minimum of $6 a week, except that if full wages be less than $6 full wages are paid. The new Arizona act, adopted by vote of the people in 1925, fixes no maximum weekly limit.

Many of the laws, however, still contain provisions far less liberal. In some states the percentage of wages paid is 65, 60, or 55 per cent, and in over one-fourth of American commonwealths which have compensation laws it was in 1926 still as low as 50 per cent. The weekly maximum, also, is often lower than in North Dakota, being sometimes $15, or in a few cases $12. Besides granting a low percentage of wages, frequently held down by a weekly maximum limit, most states still further restrict the total amount to be recovered, either directly or—what amounts to the same thing—by stating a maximum period beyond which compensation is no longer payable. Time limitations for total permanent disability vary from 260 to 1,000 weeks, and money limitations from $3,000 to $6,000.

The reason for these unprogressive restrictions is not hard to find. It is that our compensation laws are based upon the idea of merely keeping the injured and his family from starvation, rather than upon the principle of replacing wage loss. The common 50 per cent scale is obviously insufficient to keep a family from hardship. Despite spectacular instances to the contrary in some strongly organized trades, the majority of workmen hardly receive when employed enough to pay their current living expenses, and when their income is cut in two these expenses cannot be met. The low weekly maxima fixed in many states intensify the deprivation. A family whose head

receives ordinarily $40 or $50 a week has a fairly high standard of living; and if in case of accident the maximum recoverable is limited to $12 or $15 weekly, that standard cannot be maintained. This is especially true if disability is of long continuance, yet some states which fix these low maximum limits for the first few years of disability reduce them further after stated periods, in some instances to "as little as $5 a week."

These excessive limitations upon the amount of compensation work considerable hardship to the cases which they affect, and should not be included in the law. If the accident results in permanent total disability, the injured should receive two-thirds of his wages for life. Nothing short of this will bring the proper relief. With a two-thirds normal income the family will be deprived of some things, but still the amount is sufficient to maintain about the same standard of living, and even in the lower-paid classes to keep the family from dependence on charity. Under our system of laws children are required to go to school until a certain age, which means considerable expense. If in case of accident causing a total loss of earning capacity no proper compensation is provided, or if the compensation period is limited, it frequently means disintegration of the family.

(*d*) *Compensation for Partial Disability.* Compensation for permanent partial disability is based in most states upon a fixed schedule of a certain number of weeks' benefit for each specific dismemberment, such as fifteen weeks for the loss of a little finger, 125 weeks for an eye, or 215 weeks for a leg. While this system of a fixed charge for each dismemberment, regardless of its effect upon earning power, is easily administered, it is open to serious criticism on the grounds of arbitrariness and injustice. A system like that in use in California, in which partial disability is defined as a proportion of the loss of earning power, is more difficult to administer, but results in more equitable settlements. In response to the criticism that the number of weeks' benefit allowed by the fixed injury schedule is too small there has been a tendency to increase the specific periods, but the best thought is now against this method and in favor of indemnifying on the basis of the loss of earning power. For this purpose and to facilitate administration California has worked out a schedule showing the percentage

of impairment in earning capacity which each specific injury may be expected to cause to a worker of any given age in any given occupation in the state. If the injured suffering a permanent impairment of earning capacity is a minor, his compensation should be increased until he reaches the age of twenty-one, as his wages would probably have increased had he not been injured. About a third of our states already take cognizance of this fact, and the number is growing.

(*e*) *Compensation for Death.* If the injury results in death a funeral benefit should be paid in all cases, whether or not the deceased had dependents entitled to compensation. About $150 has usually been regarded as sufficient to cover all essential funeral charges. Some states have laws providing funeral benefits only if there are no dependents entitled to compensation, but most grant funeral benefits in all cases.

Most states thus far have not been very liberal in prescribing the amount of compensation to be paid to dependents. A few, however, grant pensions to widows for life or until remarriage. North Dakota, one of the most liberal states, in 1926, prescribed 35 per cent of wages for the widow until death or remarriage and 10 per cent additional for each child, the total not to exceed 66 2/3 per cent. A few states limit the death benefit to a specified monthly amount, such as $35 or $50, while others set a maximum for the total, varying from $3,000 to $7,800.

A life benefit to the widow and additional amounts for each child up to the age of eighteen is the only rational system to adopt. Statistics show that the average age of injured workmen is about thirty-two years. A young family which loses its supporter at such an age cannot exist very long on $3,000 or less. So small an amount will mean that the family must lower its standard of living, and that the children will not receive the proper care and education. Here again compensation is regarded more in the light of a means of preventing starvation than as a reimbursement for the loss of earning power. It may be expected that in the future more and more states will grant to the widow a pension for life or during the period of widowhood. If there are no dependents a substantial part of the death benefit should be paid into two special funds to be used (1) for maintenance of industrial cripples undergoing rehabilitation and (2) for second-injury cases resulting in

permanent total disability. These last provisions are found in a few laws; but if there are no dependents most states provide for funeral benefits only. The suggested system aids in the solution of two perplexing industrial problems—protecting both the employer and his permanently disabled worker from unfair treatment.

The question as to whether alien non-resident dependents should be entitled to death benefit has been considerably discussed, and a few states still expressly exclude them. In most states they are expressly included, though often on a discriminatory basis, and elsewhere, though not mentioned, they are apparently included by implication. There seems to be little justification for excluding non-resident dependents or discriminating against them in any way; if our industry has been responsible for the loss of a family supporter, due remuneration should be made regardless of nationality or residence.

c. Rehabilitation. Of recent years compensation for injuries has come to mean more than partial reimbursement for monetary loss. Considerations—perhaps economic in their origin, but humane in their outcome—have led to the view that no law truly compensates for injury which fails to rehabilitate. Rehabilitation includes all that can be done by surgery, general reeducation, technical retraining, and assistance in finding reemployment, to place the injured worker on his feet again as a self-supporting citizen. Prior to 1920 little progress had been made in this country in providing rehabilitation opportunities for disabled civilians. Massachusetts was the first state to act, establishing a rehabilitation program by a law of 1918. The next year nine other states followed her lead. When in 1920, however, Congress granted federal aid on a dollar-for-dollar basis to states carrying on rehabilitation work, great impetus was given to this movement. By the spring of 1926, forty states had undertaken the work. Plans usually call for cooperation between the state compensation and educational authorities and the federal government.

d. Method of Administration. There are two general ways of administering compensation laws. One is to appoint a central board with general powers of enforcing the law, and the other is to create no machinery for the administration of the act, but to provide that all questions arising shall be settled

by the courts. Of the states having laws in 1926, less than a fifth, most of which were of little industrial importance, had no central administrative body and left the administration to the courts. All other states have adopted the central administrative plan.

Investigations made by the National Civic Federation and the American Federation of Labor,[1] and by the American Association for Labor Legislation,[2] as well as by the United States Bureau of Labor Statistics, indicate that the administrative board plan is much superior to the court procedure scheme. The first two studies agreed in estimating that in New Jersey not over 60 per cent of the amounts payable under the statute were being paid, and the report of the Association for Labor Legislation made it clear that the court procedure plan was mainly responsible for this defeat of the legislative intent. The chief flaws in the court system were pointed out to be (1) the delay of court procedure, (2) the cost of court procedure, and (3) the unfitness of the courts for the settlement of compensation claims. The New Jersey statute was subsequently amended to provide for the board system of administration.

Prompt, honest, and full compensation, and medical aid as required, are the vital factors in bringing relief as desired by the law, and to achieve these purposes a central board with broad powers is essential. States with central boards having full power to make rules and regulations require receipts to be filed showing actual payment of compensation, and since they provide for arbitration hearings in cases of dispute there is little danger of fraud and deception of workmen, and payments are promptly made. The board should consist of three or five members appointed by the governor and should have power to employ necessary assistants. To insure their adequate attention to the responsible duties of their position, its members should be required to devote their entire time to its work.

e. Security of Payment. In order to protect the employer, as well as the workmen, liability under the compensation laws

[1] *Report upon Operation of State Laws,* Senate Document No. 419, Sixty-third Congress, Second Session.

[2] "Three Years under the New Jersey Workmen's Compensation Law," *American Labor Legislation Review,* March, 1915, pp. 31-102.

is commonly covered by some form of insurance. Should several of his men meet with a serious accident at one time, the small shop-owner or contractor would not be financially able to pay the compensation. For this reason nearly all states compel employers to insure their risk unless they can give satisfactory evidence that they are able to bear losses due to accident even if very serious. This, of course, means that practically all small employers will carry insurance, while many large companies will carry their risks themselves.

The carrying by a concern of its own risk is sometimes called "self-insurance," and in addition thereto three other methods have been developed: (1) insurance in a state fund; (2) insurance in a stock company; and (3) insurance in a mutual or interinsurance company.

State insurance funds are based on the principle that since the state by the passage of a workmen's compensation act has created a new obligation on the employer, it should provide him with the means of fulfilling it economically. Such funds have been established in nearly half of the laws, including California, New York, North Dakota, Ohio, Oregon, and Washington. Sometimes, insurance in such a fund is compulsory,[1] while some other states permit insurance in authorized private companies. Short as their experience has been, the success of efficiently managed state funds is undoubted. The federal government, through its workmen's compensation expert in the United States Bureau of Labor Statistics, has investigated the practical operation of workmen's compensation laws in twenty states and two Canadian provinces, and reported in 1920 that state funds are superior to private insurance companies in respect to cost, service, and security. The report[2] states: "The cost of compensation insurance to employers under different insurance systems may be indicated by their expense ratios. The average expense ratio of stock companies is approximately 38 per cent; of mutual companies, about 20 per cent; of competitive state funds, about 10.6 per cent; and of exclusive state funds, about 4 per cent. Under an exclusive state fund, therefore, the cost to employers would be 30 per

[1] By 1920, in Nevada, North Dakota, Ohio, Oregon, Washington, Wyoming.

[2] United States Bureau of Labor Statistics, *Bulletin No. 301*, p. 21.

cent less than under stock insurance and 15 per cent less than under mutual insurance. The total saving to insured employers of the United States, if all were insured in exclusive state funds, would be over $30,000,000 annually. . . . Thus far no injured workman has lost his compensation because of the insolvency of state insurance funds, nor has any large mutual company become insolvent. On the other hand, there have been several disastrous failures of private stock companies during the last three or four years. These failures have resulted in hundreds of thousands of dollars in unpaid claims." Recent growth of workmen's compensation insurance would make the saving to employers considerably greater than that estimated by Mr. Hookstadt in 1920. The Ohio Industrial Commission[1] reported July 1, 1925, that during the preceding year it had saved to employers in that state alone, more than $7,000,000.

The funds of Ohio, New York, and Pennsylvania have been subjected to critical examination by official commissions. The consulting actuary who was called in an advisory capacity by all three commissions says, as a result of his examination into the accounts and administrative procedure of the funds: "State funds for workmen's compensation insurance are shown by my investigations to be extraordinarily successful. They are financially sound. They are operated on the strictest actuarial principles. They reduce management expenses to a minimum. They have made steady progress even under competitive conditions. They permit increasingly liberal benefits for injured workers and their families. They result in enormous savings to industry."[2]

Stock companies carry on business for the profit of their stockholders. As a consequence of their large business soliciting organization, comprising thousands of agents, their managing expenses are excessively high.

Mutual insurance companies seek the protection of their own members, who are the policyholders. They do not need the large, expensive organization which a stock company must have, and therefore their managing expenses are lower. Mutual

[1] *Industrial Relations*—the official bulletin of the Ohio Industrial Commission—Vol. II, No. 7, p. 3.

[2] Miles M. Dawson, "State Accident Insurance in America a Demonstrated Success," *American Labor Legislation Review*, March, 1920, pp. 8-14.

insurance is insurance at actual cost, any excess of premium remaining the property of the policyholder and being refunded in the form of dividends. A strong feature of the mutual insurance method, provided it be made general and brought under close supervision, is the added inducement to employers to do their own factory inspection. Such voluntary inspection, if stimulated by the financial inducement of reduced insurance rates for safer conditions, has sometimes been found even more effective than state inspection.

The premiums charged for workmen's compensation insurance obviously depend greatly upon the benefits provided by the compensation act, and thus we have different rates in the various states. Another factor which largely determines the insurance rate is the hazard of the industry. Thus, we have one rate for logging, one for machine shops, one for clerical pursuits, and so on. Even in establishments of the same industrial group widely different hazards will be found. One company may perhaps take great interest in safety work, while another does not. The former would be a better risk than the latter and is entitled to a lower rate. This allowance is accomplished under a merit rating system. Instead of one flat rate for an entire industry, this system seeks to adjust the rate of each employer to the hazard of his particular establishment. A schedule of credits and charges is provided, so that the employer receives credit for conditions tending to reduce or prevent accidents, and, conversely, he is charged for conditions conducive to accidents.

The feature of accident prevention just alluded to is too often underestimated when discussing compensation laws. After all, to prevent the injury is of greater significance than to provide compensation for it; accident prevention is the greatest feature of a comprehensive accident indemnity plan.

The accident prevention or safety movement has spread rapidly in the last few years, and the chief factor in this development is the growing correlation between accident prevention and compensation. State agencies are usually effective in accident prevention work to the degree that they secure the cooperation of employers and of workmen. Their main function consists in educating these two in methods of safety. State agencies can order the application of mechanical safe-

guards. Their rules afford standards. But their inspectors can do but little in comparison with what the employer and employee can do, under the stimulus of an adequate compensation system.

Neither insurance companies nor state funds have power to compel the safeguarding of machinery, but they can frequently attain the same end by increasing or reducing the insurance rates under the merit-rating system previously discussed. Many companies now have a force of inspectors who investigate the risk before the final rate is computed. During 1924 the amount expended on inspection and rating by insurance companies in the United States equaled 2.9 per cent of the total earned premiums[1] on compensation business. It is impossible to measure statistically the preventive force of compensation laws. Our accident statistics are far from perfect and, moreover, many non-measurable social forces contribute to the final accident rate. Authorities agree, however, that compensation laws have been among those forces making for safety.[2] In 1920, C. W. Price, then general manager of the National Safety Council, stated that during the five years when he was connected with the Wisconsin Industrial Commission accidental deaths were reduced 61 per cent. "One-half of the credit for this accomplishment," he says, "must be given to the stimulus which the compensation laws gave to the whole safety movements."[3]

In order to secure more satisfactory industrial accident and occupational disease statistics for purposes of prevention as well as for rate-making, a number of government bureaus and interested organizations have jointly engaged in working out uniform industry classifications and uniform methods of reporting.[4] If the classifications agreed upon are finally adopted in all states, the occupational accident and disease statistics will be comparable, and a vast amount of valuable information will then be available.

[1] New York State Superintendent of Insurance, *Report, 1925,* Pt. III. p. 77.

[2] "The Relation of Workmen's Compensation to Accident Prevention," by John B. Andrews, *Annals of American Academy of Political Science,* January, 1926, pp. 205-209.

[3] *American Labor Legislation Review,* March, 1920, p. 26.

[4] See "Reporting," pp. 358-366.

2. Health Insurance

The development of machinery, the expansion of industry, and the growth of the wage-earning class have not only brought into existence the problem of industrial accident, but have also added importance to the question of the wage-earner's ill health. Since a large amount of the worker's time and energy are expended in the workshop, it is natural that industry and the conditions connected with it are among the important factors seriously affecting his health. Foresight, consequently, has led to the introduction of health insurance, which is gradually being extended to cover all occupations, even those in which the risk to health is less obvious.

(1) *Early Steps in Health Insurance*

The importance of adequate provision in case of illness or invalidity was recognized by the workers long before the era of social insurance. As early as the Middle Ages the insufficiency of individual action was realized, and a more satisfactory arrangement, that of insurance, was initiated by the mediæval gilds. Under these early plans insurance was purely voluntary and the workers had to bear the full cost. This optional unassisted form of health insurance still exists in many civilized countries. In this country it is provided to a limited extent by trade unions, fraternal societies, establishment funds,[1] and insurance companies. Except for the device of "group insurance," by which a few large concerns have insured their employees without charge to them in a commercial company, it is the only form of health insurance so far in operation here. But under optional insurance most workers are either unwilling or unable to make regular outlays for the premium, and thus are left without the much-needed insurance protection. Other weaknesses frequently charged against the system are inefficiency of management, inadequacy, lack of state supervision, financial instability, and, in the case of profit-making insurance companies, excessive cost.

[1] Funds organized among the workers in one plant or establishment, usually under the control of the employer.

A remedy for these defects was offered in the device of government subsidies and control. This measure marked the beginning of the second stage in the history of health insurance and directly prepared the way for the compulsory principle. The aim of government subsidies is to relieve the worker from a part of the burden and thus to stimulate insurance; the aim of control is to secure efficient management. Subsidies are usually given to the so-called recognized societies, that is, health insurance organizations which answer certain requirements and submit to government regulations.

The system of subsidized insurance was first introduced in Sweden in 1891, and existed in 1925 in six countries: Sweden, Denmark, Belgium, France, Iceland, and Switzerland. Government regulation of voluntary schemes, without direct subsidy, existed in several other countries. The financial assistance granted in these countries and the government supervision, potent though they are, cannot be expected to be a very vigorous stimulus to insurance among the classes most in need of it. Obviously, compulsory insurance, transferring a considerable part of the burden to industry and including in the system those workers who most require this protection, is a more effective way of meeting the need.

(2) *Compulsory Health Insurance*

Long before 1883, the first date in the official history of social insurance, there existed in several states of Europe insurance associations in which the elements of compulsory state supervised insurance were found. It was left, however, for Germany first to gather, in the year mentioned, these dispersed components into one coordinated unit. By 1925 [1] widely applicable compulsory legislation had been enacted in Germany, Austria, Hungary, Luxemburg, Norway, the Serb-Croat-Slovene Kingdom, Russia, Great Britain, Roumania, Netherlands,[2] Bulgaria, Portugal, Czecho-Slovakia, Poland, Greece, Japan,[3] Jugo-Slavia, Esthonia, Latvia, and a number of other

[1] International Labor Office, *Sickness Insurance* (Studies and Reports, Series M, No. 4, 1925).

[2] Passed in 1913 but had not, by 1925, been put into effect.

[3] Necessary funds for organization of this scheme were deleted from the 1925 draft budget and the insurance scheme was not put into effect that year. (*Industrial and Labour Information*, Vol. XIII, No. 5, p. 34.)

countries maintained compulsory systems for individual industries.

Health insurance legislation has generally recognized the existing mutual sick benefit funds of various kinds, such as fraternal societies, trade unions, and establishment funds, which were allowed to continue business, provided they complied with the regulations imposed upon them by the new law. In many countries the law also brought into existence new insurance associations, the local sick funds, for the insurance of persons not claiming membership in any other society. In a few countries, where mutual benefit funds had reached no appreciable development of the compulsory law, government agencies have been organized to insure all persons subject to the act.

The scope of health insurance legislation varies in the different countries. The early legislation was rather restricted, but later amendments have in many cases increased the numbers covered. Thus, for example, the German legislation which covered, in 1885, 4,671,000 persons, or 10 per cent of the total population, in 1911 was amended to include 14,000,000, or 22 per cent of the population, and its scope was further broadened after the revolution of 1918.

Many of the more recent acts, moreover, have permitted broad coverage from the time of their original enactment. By 1925 the compulsory health insurance laws of nine countries [1] covered practically all persons doing paid work in the service of others even including in most cases apprentices, home workers, and independent workers, but usually excluding public employees as well as blood relatives of the employer, casual workers, and certain other numerically unimportant groups. The laws of Germany, Great Britain, Norway and Poland exempted, in addition, special classes of workers—usually non-manual—earning over specified amounts. One country, Portugal, had an even broader sickness insurance act which included all persons between the ages of fifteen and seventy-five engaged in any occupation "recognized as worthy and honest by custom and tradition and sanctioned by law." The criterion of paid work did not apply. Though practically the whole adult popu-

[1] Germany, Norway, Great Britain, Czecho-Slovakia, Poland, Austria, Jugo-Slavia, Russia, and Bulgaria.

lation contributed to this scheme, however, only persons whose annual incomes were below 900 escudos were eligible for benefit.

On the other hand, the compulsory health insurance laws of seven countries[1] were still, in 1925, restricted largely to workers in industrial employments, excluding agricultural laborers and domestic servants, and in all but three[2] cases commercial and transport workers.

The cost of insurance is usually distributed between the worker and the employer, and in some countries the government also contributes a share. By this device the employer is compelled to bear some portion of the cost of sickness among his employees, and the worker receives larger benefits than he could purchase unaided. In Russia, however, the employer bears the full cost and in Roumania it is met entirely by the employee. In other countries employees contribute from 40 to 66 2/3 per cent. In Norway the worker contributes six-tenths, the employer one-tenth, the commune one-tenth, and the state the remaining two-tenths. In continental legislation the premium is frequently calculated as a percentage of wages. The employees are divided into wage groups, and the premiums and benefits vary with an increase in the worker's income. Great Britain, however, has not followed the continental practice, but has adopted a uniform rate of contributions, regardless of wage differences. The insured male worker pays weekly ten cents, the female worker eight cents; in either case the employer adds ten cents. The state pays two-ninths of the total expense. To mitigate any hardship on the low-paid worker, special provisions are made for those earning less than at the rate of $1 a day, whereby the worker's contribution is diminished, and that of the employer and state increased. If the worker earns less than 75 cents, the employer bears the whole cost.

In return for their contributions, workers usually receive both a money benefit and medical care. The cash benefits paid in time of sickness are not equal to the full wage, but in most laws are calculated as a certain percentage of the basic

[1] Luxemburg, Hungary, Roumania, Esthonia, Latvia, Greece, and Japan.

[2] Luxemburg, Hungary, and Greece.

wage, the figures ranging from 50 to 100 per cent.[1] England has been consistent with her flat rate contributions and has adopted a system of uniform benefits of $3.75 a week for men, and $3 a week for women.[2] In general, benefit is not allowed for the first three days of illness, and is paid for only a limited number of weeks in a year—the periods varying from sixteen to fifty-two weeks a year. Benefit is usually made conditional upon a doctor's certificate stating that the applicant is incapable of work. When the attending physician certifies that the patient has recovered, sick benefit ceases.

The German and British acts differ in the character of the disabilities which they include. Germany is typical of the countries which have included "invalidity"—chronic illness or impairment of earning capacity—in the old-age insurance act, so that only temporary illnesses are covered by health insurance. Great Britain, on the other hand, has included "invalidity" in the provision for health insurance. The invalidity contemplated by the British legislators, however, is limited to incapacity for work because of disease or disablement, as distinguished from reduction in earning power. The British grouping of invalidity with sickness benefit is probably due to the existence of a state system of old-age pensions. As the recipients do not contribute to the pension, it was desirable to make provision for invalidity in the health insurance system, which is contributory. The British invalidity benefit consists of a weekly payment of $1.87[3] as long as incapacity for work continues, though it ceases when the beneficiary becomes entitled to an old-age pension.

Medical attendance was furnished by all compulsory health insurance systems in force in 1925. If an insurance system is to accomplish its ultimate object of improving the health of the workers, it is of great importance that they receive treatment whereby they may be restored to health. Furthermore, it is financially important to the insurance funds that

[1] The latter figure is allowed in Russia, where, however, the central social insurance authorities may, in case of shortage of funds, reduce the benefit for temporary disability to not less than 66 2/3 per cent of wages.

[2] The original benefits and contributions of the British act were somewhat lower. The figures given here were fixed by the amending act of May, 1920.

[3] *Ibid.*

sick members shall recover as quickly as possible and so reduce the amounts expended upon sick benefit.

The medical care provided usually includes not only physicians' services, but also hospital treatment when needed and the necessary medicines and appliances, such as spectacles, trusses, and crutches. In some countries it includes medical care to all members of the immediate family. In Great Britain, where medical care was from the beginning less liberal and where specialist services and hospital care were not provided, the inadequacy at once became manifest and by 1920 a strong movement for more liberal benefits was under way.

In providing medical care for insured persons, two fundamental safeguards to the economic interest of the medical profession have developed which are observed in the best practice; namely, free choice of doctor by the patient, and collective agreements between the doctors and the administrative authorities. Free choice of doctor prevents insurance practice from being monopolized by a few physicians and also permits the insured to apply for treatment to practitioners in whom they place confidence. Collective agreements between the doctors and the authorities have the same value for the medical profession that collective bargaining has for organized workers. In Great Britain, for example, free choice of doctor is recognized by legislation, while the more detailed arrangements with the doctors are made between the medical men and the local insurance committees. In practice the details of the agreement are settled by negotiations between authorized representatives of the physicians and of the insurance authority for the entire country. Various methods of remunerating the physician have been adopted. While doctors generally urge payment by the visit, the system of "capitation," or a lump-sum payment for each person for the year, has been adopted in Great Britain and is preferred by the physicians. In some other countries a combination of the two principles is effected by setting aside for the payment of medical services a definite sum for each insured person for the year and distributing this amount among the doctors upon the basis of the actual services rendered by each.

In the organization of the carriers of insurance each country has adapted itself to existing conditions. Germany found

already in existence mutual aid funds and an effective system of compulsory insurance among miners. The former it allowed to serve as a substitute for compulsory insurance, providing that employers might be exempted from contributing for workers so insured; it also permitted establishment funds, under certain conditions, to carry the insurance. The system, however, was based in the main on self-governing local mutuals, organized by the law, which it has been the policy to encourage, so that they are now overwhelmingly predominant. This system, with some modifications, has been adopted by most of the central European countries.

Great Britain built its insurance system around the voluntary friendly societies, utilizing their organization and permitting them to establish separate sections for national insurance. Accordingly, many societies have both a "private" and a "state" section. In contrast to the German method, the insured are not grouped according to trade or locality, but are given unrestricted choice of society. As a result of this freedom, the members of some of the large societies are distributed throughout the kingdom and through various industries. Segregation by locality, and in some large cities by trade, which is not possible under the British system, has many practical and technical advantages, such as more precise distribution of the risk and greater ease of administration. In a few countries, of which Russia and the Serb-Croat-Slovene Kingdom are typical, there had been practically no development of voluntary mutual schemes prior to the passage of the compulsory act and consequently completely new organizations founded and operated by the government became the sole insurers.

There are two typical methods of establishing security of payments. In Germany the dues are calculated so as to cover the current expenditure on benefits and to accumulate a small reserve fund. It is, however, a recognized fact that sickness increases with age and that any voluntary fund organized on this basis would be compelled to increase its dues as the members advanced in years in order to cover the increasing costs—unless the fund is able to attract a sufficient number of young lives. These younger members, paying the same dues as the older members, do not claim the same amount of sick benefit,

hence from their contributions a surplus would accrue which could be devoted to making up the deficit caused by the older members. This system is practicable in Germany, since each local or trade society is practically assured of a due proportion of young lives which will pay for the older members.

In Great Britain the contributions are calculated so that the surplus accumulated during the early life of each worker may be applied for his own benefit in later years. That is, contributions are not calculated on the simple basis of covering expenditures, but upon the basis of covering the estimated liability for the average person throughout life. This involves the accumulation of an "actuarial reserve" for each insured person. This method of financing has not been satisfactory in Great Britain, where it has been combined with a flat rate of premium and free choice of society. The German system is followed by most of the other countries.

(3) *Maternity Insurance*

Insurance provision for the needs of mothers at the time of childbirth is found in many countries. By the end of 1925 such provision was made through compulsory health insurance in fifteen countries, through compulsory maternity insurance in one, through state aided voluntary sickness insurance in five, through state grants in six,[1] and through compulsory grants from employers in four.

In France, Sweden, Denmark, Belgium, and Switzerland, government grants are made to sickness societies which voluntarily provide maternity benefits. In France, special societies have been organized for the purpose. In Sweden and Switzerland the government subsidizes approved sickness insurance carriers and gives an especially liberal grant toward meeting the expenditure for maternity care, thus trying to encourage provision for this need. In Switzerland the federal legislation for voluntary insurance may be made compulsory by the individual communes and cantons. In Belgium and Denmark government subsidies are given sick funds which provide maternity care among their benefits.

[1] In four of these countries the system coexists with the provision for compulsory or voluntary subsidized insurance.

The fifteen countries which in 1925 provided maternity benefits as part of compulsory health insurance legislation include Great Britain, Germany, Luxemburg, Holland,[1] Roumania, Austria, Hungary, Czecho-Slovakia, Poland (by decree), Russia, Norway, The Serb-Croat-Slovene Kingdom, Latvia, Japan,[2] and Bulgaria. The benefits thus provided are available for insured women. In some countries, as in Great Britain, Holland, and Roumania, a money benefit only is provided, but more frequently both cash and medical care are furnished. The cash maternity benefit is usually equal to the regular cash sick benefit, varying from 50 per cent to the full amount of the basic wage. The period during which the cash benefit is paid varies from four weeks up to the entire period of incapacity for work. Most frequently, however, benefit is paid during the period before and after confinement during which employment is prohibited by law. The legislation of many countries provides an additional allowance—a nursing benefit—during a limited period, provided the mother nurses her child.

Health insurance legislation in some countries also makes provision for the uninsured wife of an insured man, usually for medical care at confinement, and sometimes for a modest cash benefit in addition. Great Britain, contrary to the usual continental developments, provides no medical care but a cash benefit of $20 for an insured married woman (regardless of whether or not her husband is insured), $10 for the uninsured wife of an insured man, and $10 for an insured unmarried mother. An insured woman unable to work during pregnancy is entitled to her usual cash sickness benefit.

The war with its emphasis upon the importance of adequate care for mothers and young children stimulated development in this field. In Germany, during the conflict, maternity provisions voluntarily undertaken by the funds in addition to the required six weeks' maternity benefit were curtailed, and an extensive system of maternity grants financed partly by the state but administered by the insurance funds was substituted. In September, 1919, Germany placed the extended

[1] The Dutch and Japanese health insurance laws containing these maternity provisions had not yet been put into effect in 1925.
[2] *Ibid.*

provision for maternity care upon a permanent legal basis as part of the regular health insurance scheme. In addition, uninsured women of small means were granted maternity benefits from the treasury. In Great Britain the emphasis was laid upon more extended provision for consultation centers where mothers might go for advice and treatment. The government, through the local government board in 1916, offered to bear half the expense of such centers and other specified free medical assistance to mothers afforded by local organizations, public or private. In a number of other countries maternity benefits were liberalized or came into being for the first time in the post-war period.

Compulsory maternity insurance, independent of any health insurance scheme, existed in 1925 in Italy and was about to be organized in Spain. Italy, in 1910, established a system of compulsory maternity insurance applicable to women industrial workers of from fifteen to fifty years of age. Originally, women employees and their employers contributed equally, while the state contributes one-fourth of the confinement benefit. Subsequent amendments withdrew the state subsidy and divided contributions between employee and employer in the ratio of 3 to 4. In 1923 Spain directed her Minister of Labor to issue—before March 31, 1925—regulations for the establishment of a subsidized compulsory maternity insurance scheme providing medical care and cash benefits for six weeks before and after childbirth.[1] In June, 1925, investigation of the subject was still under way but no insurance scheme had been established.[2]

Direct state aid early in 1926 was in existence in Australia, Denmark, France, Germany, the Serb-Croat-Slovene Kingdom, and Spain. In Australia legislation of 1912 provided for a payment from government funds of $24.30 to every woman upon the birth of a living child. Danish legislation of 1913 provided that any public relief given lying-in women during the four weeks following confinement, when their industrial employment is prohibited, shall not be considered poor

[1] Decree amending Sec. 9 of the Act of March 13, 1900, respecting the employment of women and children. Dated August 21, 1923. See Section 2.

[2] International Labor Office, *Industrial and Labour Information*, Vol. XV, No. 7, p. 345.

relief. A French act of 1913 provided a grant from public funds to women employed by others for wages. This grant is given upon condition that the mother give up her usual gainful employment, that she take all practicable rest, and that she follow health instructions given her. An additional allowance is made if the mother nurses her child. In 1918 this act was extended to include all women with insufficient means. Germany, 1919, and the Serb-Croat-Slovene Kingdom, 1922, granted maternity allowances from public funds to women of small means not included under their respective compulsory health insurance schemes. In 1923 Spain provided a temporary system of state-financed maternity grants pending the establishment of the contemplated compulsory maternity insurance scheme. The laws of the Federated Malay States, China, the Straights Settlements, and Lithuania (agricultural workers only) provide for maternity benefits to be paid by the employer during rest periods before and after childbirth.

Although in this country several states, beginning with Massachusetts in 1912, prohibit the industrial employment of women for a period of several weeks immediately before and after childbirth,[1] no American state had before 1926 recognized the justice and necessity of furnishing maternity benefits during such periods of enforced idleness. The International Labor Conference of 1919, held in Washington, adopted a draft convention providing that during the six weeks' rest which a wage-earning woman may take preceding confinement and the similar rest which she is to be required to take following confinement, she shall be paid "benefits sufficient for the full and healthy maintenance of herself and her child provided either out of public funds or by means of insurance, the exact amount of which shall be determined by the competent authority in each country, and as an additional benefit shall be entitled to free attendance by a doctor or certified midwife." If insurance is to accomplish its object of conserving the health and life of a nation, it is desirable that maternity benefits be extended as widely as possible.

[1] See "Childbirth Protection," p. 385. Medical and nursing care for mothers, but not cash benefits, is provided in the Sheppard-Towner Act of 1921 (Public 97, Sixty-seventh Congress, 1st session). This Act, which is an important step in federal-state cooperation, by 1926 was accepted by forty-three states and Hawaii.

(4) *Need in the United States*

By 1920 universal workmen's health insurance was eagerly discussed in America, a bill having been passed by the New York Senate in April, 1919. Nine states,[1] through official investigating commissions, had reported, thus making available to the public a wealth of data concerning the need for this type of social insurance. Despite these revelations, however, the selfish and highly organized opposition of commercial insurance companies and medical societies succeeded in so misleading the public mind as to the true purposes and merits of health insurance, that legislative work in this field became totally impossible in the period immediately following.

The facts, unperverted by propaganda, however, are available and convincing. Official investigations have disclosed that in the course of a year approximately 20 per cent of the workers are sick, each case lasting on the average about thirty-five days. Other investigations have shown that at any one time 2.3 per cent of the workers fifteen years of age and over are so sick as to be unable to work, and that sickness when distributed over a group means an average of about 8.4 days of sickness a year for each person. Although the hazard has been measured with a fair degree of accuracy, existing forms of insurance have so far been unable to meet the situation. Official investigations have shown that only about one-third of the workers carry health insurance, and that what they do carry is usually for small amounts and often unaccompanied by any medical benefit. Low-paid workers, among whom there is most sickness, carry the least insurance. Savings from wages, which usually have not kept pace with the great increases in the cost of living, are too frequently inadequate to meet the strain of a period of sickness. It is not surprising, therefore, that sickness is a factor in more cases of dependency than any other one cause, being involved in at least one-third of the cases which seek relief from voluntary charity.

Although the burden is borne by the workers and those philanthropically inclined, there is accumulating evidence that industry is also a factor in causing sickness and that it should

[1] California, Massachusetts, New Jersey, Connecticut, Wisconsin, Ohio, Illinois, New York, and Pennsylvania.

justly bear a portion of the expense. Investigation has also shown that the medical needs of sick wage-earners are inadequately met, partly on account of inability to pay the customary fees. As a result, many go without proper care, or obtain medical charity where it is available. The recent advances in medicine resulting in increased specialization have increased the expensiveness of medical service and the need for its organization. Among those familiar with the social side of medicine there is a keen realization that a reorganization of medical practice and new methods of financing it are urgently needed.

After a careful survey, the California Social Insurance Commission, which was the first to report, concluded that: "Health insurance to be effective must be made compulsory upon the individual worker." [1] The Pennsylvania Health Insurance Commission stated two years later: "Your commission believes that the best way to close this sickness highroad to poverty and dependency is to make available immediate and adequate medical care for sickness cases and to prevent the financial burden of sickness from falling entirely on the person least able to bear it—the sick worker. In some way the burden should be distributed among all wage workers, or shared by industry and by the community as a whole." [2] The New York State Federation of Labor, in recommending compulsory health insurance, pointed out that only through this method could a portion of the cost be passed on to industry. On the medical side, health insurance distributes the cost of medical care between industry and the workers and enables the worker to pay his share of the cost in advance during periods of good health. It will also facilitate the organization of group practice which is required by the recent advances in medicine.

The bills which have been introduced in the various state legislatures follow in the main the standards for health insurance formulated by the American Association for Labor Legislation in 1914.[3] They usually provide for a cash sickness benefit during twenty-six weeks, medical care, maternity bene-

[1] *Report of the Social Insurance Commission of California,* 1917, p. 121.
[2] *Report of the Health Insurance Commission of Pennsylvania,* 1919, p. 9.
[3] *American Labor Legislation Review,* December, 1914, pp. 595-596.

fits, and a funeral benefit. The cost is divided equally between worker and employer, while the state bears the cost of central supervision. The insurance is to be carried by mutual democratically managed associations of workers and employers, called "funds," which the state will supervise.

In addition to the relief value of such measures, they contain important possibilities for the prevention of illness. After a century of rapid industrial growth and increasing urban population we are just beginning to value as a social factor the sanitation which drains cities, provides pure water and pure milk, and quarantines infectious diseases. We have too long failed to realize that the ill health of the individual, even though he may not be suffering from a contagious disease, is a matter of public concern. Medical care of adults is no less important for a state which values the lives of its citizens than is the medical examination of school children which we have already adopted in the larger cities.

More general medical consultation will reveal unsuspected tendencies which, if allowed to develop, will have as pernicious effects as the adenoids we are careful to remove from school children. Here, as in England, there are many wage-earners who are unable to afford a doctor's fee. Nor is the dispensary service given in the large cities sufficient to meet the need. A socialized medical service, whereby all who require the services of a physician may have access to the necessary treatment, has been found very effective in some countries. Great Britain's health insurance act has revealed a mass of human suffering, especially among women, which hitherto had received no medical attention. Because of the increased use of doctors, a far larger number of persons have been discovered who need operations and hospital care—persons whose ills previously would have gone without treatment until the suffering had become acute and the chances of recovery had been diminished. The need revealed has been so great that there is strong sentiment in favor of extending medical care under the insurance act to the dependents of the insured. Socialized medical service has resulted in prophylactic treatment for the individual and in the conservation of national vitality.

Great Britain's health insurance act has been an incentive for undertaking a national campaign against tuberculosis. By

means of a sanatorium benefit for insured workers suffering from this disease, more adequate treatment is being provided.

Furthermore, the necessity of spending money on preventable disease is in itself a stimulus to prevention. Various English bodies have been aroused by this factor to a keen interest in the relation between tuberculosis and housing. The financial pressure on "approved societies" is a direct inducement to demand thorough inspection of dwellings and workplaces, especially since the delinquent authority can be made to pay the cost of the sickness produced by the poor sanitary conditions which it has allowed to exist. In its report on public health, after the war, the British Ministry of Reconstruction stated of the workings of the insurance act: "The attention thus drawn to these [sickness] conditions not only stimulated provision for the direct alleviation of existing suffering, but also encouraged the rediscovery, as it were, following the course of evolution of medical science, of a humaner principle of prevention, as the means by which the sufferings of the individual could best be relieved or averted. In another general respect the insurance act entirely altered the previous position. It created a new body of organized public opinion, with a financial interest in the improvement of the national health." [1]

It is also possible, as the American plans provide, to levy a higher premium upon the industry or particular establishment in which the sickness rate is higher than normal. This is a means tending to persuade the employer of the economy of factory sanitation which will improve the health of the worker and thereby reduce his insurance premium. It is the same inducement of low insurance premiums for workmen's compensation which is partially responsible for the "Safety first" movement and the installation of safety appliances. Without a compulsory health insurance system, the economy of health preservation cannot be made an effective lever for reform.

3. Old-age and Invalidity Insurance

The rapid development of industry, among its other results, has placed emphasis on the individual's physical vigor and

[1] Great Britain, Ministry of Reconstruction, *Reconstruction Problems, 23*, "Public Health, I—A Survey," 1919, pp. 6-7.

wage-earning capacity. It has deprived old age of the esteem bestowed upon it under more primitive patriarchal conditions, and after a life of productive toil it relegates to the background the aged or incapacitated man as a useless, uneconomic factor. Failing health, inability to find employment, lack of means, often absence of friends willing or able to help him—such is the prospect which confronts, in the great majority of cases, the aged worker.

(1) *Unassisted Old-age Insurance*

In response to the gravity of this situation three main measures of relief have been developed: charity, saving, and insurance. Charity has been known since ancient times, and no doubt has relieved a deal of destitution; but the modern opinion is that charity, both private and public, is insufficient in amount and unsatisfactory in quality; that it exercises a degrading effect upon the recipient and is repugnant to the self-respecting person. The serious difficulties in the way of saving are also well known. The low standard of wages seldom, if ever, allows any surplus; most often the immediate demands outweigh the arguments in favor of saving. Besides, the very remoteness of old age and the uncertainty of attaining it discourage many people from making preparation for the future at the expense of the present. In this problem, as in that of provision for illness, the collective process of insurance is considered much more satisfactory than the individualistic method of savings. Professor Seager has said: "For every wage-earner to attempt to save enough to provide for his old age is needlessly costly. The intelligent course for him is to combine with other wage-earners to accumulate a common fund out of which old-age annuities may be paid to those who live long enough to need them." [1]

The development of old-age and invalidity insurance is similar to that of health insurance. The first stage in the movement was marked by optional unassisted insurance, which is still furnished by some fraternal societies, trade unions, establishment funds, and insurance companies. However, the number of fraternal societies and trade unions, either here or

[1] Henry R. Seager, *Social Insurance*, 1910, pp. 118, 119.

abroad, which undertake the complicated business of old-age and invalidity insurance is small. In many states of this country fraternal societies are prohibited from dealing in it. A 1912 study[1] showed only 42 out of 182 national fraternal benefit societies paying old-age pensions. Recent inquiries by the Pennsylvania[2] and Massachusetts[3] commissions indicate that fraternal societies dealing with this problem are still few in number. As to American trade unions, out of about 150 existing national organizations, approximately a dozen are known to pay old-age benefits. In addition, some old-age benefits are paid by individual locals and a number of national unions pay permanent disability benefits. Business concerns furnishing old-age insurance or straight pensions for their employees are also relatively few, especially in this country.

A study[4] of such private schemes made by the National Industrial Conference Board in 1925, which purports to be "virtually complete" for all regularly established schemes, showed only 248 in operation in the United States, of which 164 had reported actually paying pensions to some 36,000 persons. The vast majority of the plans were of the "non-contractual" type. The social value of these schemes is almost negligible, first because of the relatively small group affected; and secondly, because of the defects of the schemes such as uncertainty as to the receipt of the pension, arbitrary action by the employer, and restriction of the independence and mobility of labor. Insurance companies do a considerable old-age annuity business in Europe, chiefly among the middle class; in the United States, on the contrary, commercial old-age insurance for wage-earners is little known.

(2) *Assisted State Plans*

Obviously, voluntary unassisted old-age insurance reaches only a small part of the wage-earners. As a consequence, as in the other branches of social insurance, it came to be con-

[1] Lee W. Squier, *Old-age Dependency in the United States*, 1912, p. 67.
[2] *Report of the Pennsylvania Commission on Old-age Pensions*, 1919, pp. 197-200.
[3] *Report of the Commission on Pensions*, Massachusetts, 1925, p. 212.
[4] National Industrial Conference Board, *Industrial Pensions in the United States*, 1925.

sidered the duty of the state to assist its aged citizens, and the principle of state insurance, sometimes aided by subventions, was devised.

Many countries, among them Belgium, France, Italy, Portugal, and Spain, had, at one time, voluntary schemes of this type which have since been superseded by compulsory insurance. Voluntary old-age insurance, not supplemented by other schemes, existed in 1926 in Canada, Jugo-Slavia, and several Swiss cantons, while practically all foreign countries having modern old-age legislation maintain voluntary schemes for persons or groups not covered by their compulsory insurance of straight pension laws.[1]

In the United States there has been little development of such voluntary systems. Massachusetts and Wisconsin alone have taken steps in this direction. The Massachusetts plan is a system of voluntary old-age insurance through the savings banks under state supervision, while the Wisconsin system provides for the issuance of annuities by the state life fund under the supervision of the insurance commissioner.

Even state assistance and supervision, however, failed to secure for old-age and invalidity insurance any large measure of popular acceptance. Experts commonly agree that even generous subsidies do not seem to attract more than a small part of the wage-earners; that in a large number of cases the payments are either made irregularly or are after a while suspended, and that the benefits paid are very small.

In view of the insufficiency of state control and subsidy, two other very significant elements of social insurance were added; namely, compulsion and the requirement of the employer's contribution.

(3) *Compulsory Systems*

Compulsory old-age and invalidity insurance has been slower in developing than health insurance, but recently, especially since the close of the World War, it has made rapid advances. In this branch of social insurance, as in the two previously discussed, Germany took the lead, enacting its first law in 1889.

[1] See *General Problems of Social Insurance*, International Labor Office (Studies and Reports, Series M, No. 1), p. 11.

All German wage-earners of the designated ages and occupational groups, regardless of size of income, are compelled to insure. Salaried workers of the lower income groups are also included. Other classes may take out voluntary insurance. Contributions are of five grades, according to the worker's income, and are paid in equal parts by employer and employee. The pensions also are divided into five groups, corresponding to the five grades of contributions. The state's contribution consists in the payment of a fixed sum annually to each person in receipt of a pension. The age qualification for receiving an old-age pension, first set at seventy years is now reduced to sixty-five.

Provisions for old age are subsidiary, in the German law, to those for invalidity insurance. An insured person of any age, who on account of diminished strength is unable to earn one-third of the wages usually paid to normal workers in his occupation, is entitled to an invalidity pension. The law also provides a benefit to an invalided wife or husband upon the death of the insured wage-earner and a benefit to the fatherless orphan of an insured person.

Two unique points in the German old-age invalidity insurance system are sickness pensions and sanatorium treatment. Sickness benefits, equivalent in amount to invalidity benefits, are paid to persons not permanently incapacitated, who have exhausted their claims to sick pay and are still unable to work. It is entirely apart from cash payments, however, and in the realm of prevention, that the most significant feature of the whole German social insurance plan is to be found. Under the local pension boards is maintained a country-wide network of sanatoria, rest homes, and health resorts. Persons who have drawn all their sick benefits but who are still unable to work are entitled to maintenance in these institutions, and the timely and efficient care there furnished to the patients has proven a powerful factor in the prevention of invalidity.

By 1925 wage-earners in twenty-two foreign countries [1] were

[1] A 1925 Report of the International Labor Office on *General Problems of Social Insurance* (Studies and Reports, Series M, No. 1), lists the following countries having compulsory old-age insurance laws: Argentina, Austria, Belgium, Bulgaria, Chile, Czecho-Slovakia, France, Germany, Greece, Iceland, Italy, Luxemburg, Netherlands, Poland, Portugal, Roumania, Russia, Serb-Croat-Slovene Kingdom, Spain, Sweden, and

covered by compulsory old-age insurance laws many of which, like Germany's, provided invalidity benefits also. Occasionally, these laws are restricted to special groups, "industrial and commercial wage-earners," or "manual workers," and frequently wage-earners of the higher income groups are exempt from the compulsory features of the law. A few countries provide compulsory old-age insurance for persons other than wage-earners; for example, Sweden and the Swiss Canton of Glarus for "all subjects" within certain age limits; Portugal for "all persons gainfully employed"; and Austria, Czecho-Slovakia, Germany, and Poland (former Austrian and Prussian territory) for certain groups of "non-manual workers." Under most of these laws the employer, employee, and state share the cost. In some cases the state does not contribute at all, employers and employees dividing the cost, while under a very few laws the employees do not contribute and the costs are borne by the employers and the state, as in the Netherlands and Spain, or by the employers alone, as in Russia. Pensions for old age provided under most of these laws vary with the wage rate, the amount contributed, and the duration of insurance membership or employment. In a few countries, however, among them Roumania, Spain, and the Swiss Canton of Glarus, the pension is uniform for all insured persons. Invalidity allowances are uniform under some laws, vary with wage rate and contribution value under others, or in still others are computed on the basis of a uniform minimum pension supplemented by varying amounts depending on contributions. Several countries, for example, Austria, Czecho-Slovakia, Germany, and Sweden, provide additional family allowances to supplement invalidity and old-age pensions.

Compulsory old-age and invalidity insurance laws for private employees are unknown in the United States, but such coverage exists for all federal government employees in the classified civil service as well as for public employees in a number of states and most large cities. In a few cases these states and municipal laws cover practically all civil service employees

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the Swiss Canton of Glarus. In addition, Great Britain has adopted a law which in 1928 will establish a compulsory contributory scheme to supplement her present straight pension law.

but more often only special groups, particularly policemen, firemen, and teachers are included.

The American laws establishing compulsory contributory old-age and invalidity insurance for the federal government's employees in the classified civil service[1] was enacted in 1920 after years of agitation. The age of retirement was fixed at sixty-two for railway mail employees, sixty-five for mechanics, letter carriers, and post-office clerks, and seventy for all others. Any employee able and willing to carry on his duties efficiently, in the discretion of the head of his department and on approval by the Civil Service Commission, may be continued in his position beyond the retirement age for two periods of two years each, but no longer. On retirement an employee becomes eligible to a yearly pension ranging from $180 to $720, according to previous salary and length of service. By an amendment in 1926 the maximum benefit was increased to $1,000. No one who has not been employed by the government at least fifteen years is eligible to benefits under the law. In addition to the old-age pension provisions, the act establishes the same benefits for those who, after fifteen years' service but before the retiring age, become totally disabled because of disease or injury "not due to vicious habits, intemperance, or wilful misconduct." Recipients of disability benefits, unless their incapacity is known to be permanent, are to be examined annually by a United States medical officer or a designated physician to determine whether they are still eligible to the benefit. The employees' contribution toward the benefits is made through a deduction of 2½ per cent (increased to 3½ per cent, in 1926) from all salaries. Employees' contributions have covered about two-fifths of the expense of the law.[2] The balance of the cost is to be paid from general taxation. Persons who leave the government service or die before reaching the age or length of service necessary for retirement are entitled to receive all moneys paid in by them, with interest compounded at 4 per cent annually. If, however, they are over fifty-five

[1] Numbering, when the act was passed, about 300,000.

[2] The total cost of the law was, according to the *Third Annual Report of the Board of Actuaries* submitted by the Commissioner of Pensions, 6.37 per cent of the payroll. Employees contributed 2.5 per cent of payroll or 39 per cent of total cost. See *Senate Document No. 32,* Sixty-eighth Congress, First Session, p. 10.

years of age, have served at least fifteen years when involuntarily separated from the service, they may receive either an immediate annuity reduced in amount or a full pension deferred until the normal retirement date. Administration of the act is mainly lodged with the commissioner of pensions under the Secretary of the Interior.

(4) *Straight Pensions*

Another much discussed method of meeting the problem of old-age poverty is that of "straight," or non-contributory, pensions. Such pensions, their opponents charge, tend to keep wages at a low level, destroy the habit of thrift, and have an injurious effect on family solidarity. As for the last argument, it is difficult to see how the parents' dependence can add to the filial affection of the struggling wage-earner. The habit of thrift, also, can hardly be destroyed by the remote and uncertain possibility of attaining old age with a pension which is hardly sufficient to keep body and soul together. With regard to the possible effect on wages, the persons in receipt of old-age pensions are a very unimportant factor in the labor market, and as to the workingmen who have not yet reached pensionable years it is doubtful whether the prospect of a very meager assistance in their old age would alone be sufficient to make them accept lower wages. Some champions of social insurance also object to straight pensions on the apparently more valid ground that the straight grant resembles charity and is, therefore, less desirable than a system by which the worker is asked to contribute. But contributory plans involve complicated administrative machinery for collection of payments and preservation of individual records over long periods of time. In the United States, especially, where people frequently move from state to state in the course of a lifetime and where laws differ in the various jurisdictions, the administration of contributory pension schemes would be excessively involved and costly. The great advantage of straight pension plans is their marked simplicity.

Straight old-age pensions are granted sometimes to all persons meeting certain personal requirements, and sometimes for the performance of a definite period of service. Ten for-

eign countries—Australia, Belgium,[1] Denmark, France,[2] Great Britain,[3] Irish Free State, Newfoundland, New Zealand, Norway, and Uruguay—had by 1925 enacted legislation providing such aid to all persons possessing certain moral, economic, or civil qualifications. Under most of these laws a definite period both of residence and citizenship is required. Family or child desertion, drunkenness, vagrancy, and previous prison sentence are among the moral grounds which disqualify applicants either permanently or temporarily. The requirements as to the economic status of the pensioner vary widely but are usually not very liberal if judged by American standards. Australia and New Zealand aid persons whose incomes do not exceed £65 and £78 respectively (well over $300) and their limits on the total property which may be owned by a pensioner are correspondingly high. In other countries yearly income limits are much lower, sometimes less than $100. Pensions vary with the income of the pensioner but usually may not exceed fixed maximum limits. The maximum pensions, measured in American money, are equivalent in most cases to less than $150, often to less than $100 a year, and only one or two of the most liberal laws allow as much as $200.

In the United States, straight pension laws of general application, up to July 1, 1926, had been passed by the legislatures of Alaska (1915), Arizona (1915), California (1925), Kentucky (1926), Nevada (1925),[4] Montana (1923), Pennsylvania (1923), Washington (1926), and Wisconsin (1925); but the laws of California and Washington were vetoed by the state governors while those of Arizona and Pennsylvania have been invalidated by decisions of the state supreme courts. The Arizona act was a crudely drafted initiated measure to which the court objected because it contained no statement of method

[1] This act of 1920 was passed as a temporary measure to be superseded in 1926 by a compulsory contributory scheme established by a law of 1924.

[2] This act of 1905 was largely superseded by the Compulsory Contributory Act of 1910 but continues in force for persons at that time too old to enter the contributory scheme.

[3] This act of 1908 will be supplemented by a compulsory contributory scheme of old-age and widows pensions established by a law of 1925 to take effect in respect to payment of old-age pensions in 1928.

[4] A former act, 1923, under which no pensions had been paid because of inadequate appropriations, was repealed in 1925 when the present law was enacted.

or means and because of certain other technical defects.[1] The Pennsylvania act was held to conflict with an unusual provision of the state constitution which forbids the legislature to make grants to individuals or communities for benevolent purposes.[2] In each case obviously, the legal difficulty was due to the peculiarities of the particular law or constitution, and these decisions in no way imply any fundamental invalidity of properly drafted state pension legislation. The Pennsylvania legislature has taken steps toward the elimination of the constitutional difficulty in that state.

The Alaska law provides pensions of $25 a month for men or $45 for women as an alternative to care in the pioneers' home, an institution for the care of aged persons created by an earlier statute. The pension age is sixty for women and sixty-five for men. Other American laws, based upon a standard bill drafted by the Pennsylvania Commission and the American Association for Labor Legislation in cooperation with several interested labor and fraternal organizations, allow pensions to persons fulfilling certain qualifications as to citizenship, residence, character, age, and economic status. The age limit is usually seventy years (sixty-five in Nevada) and the pension $1 a day, less the pensioner's outside income. Montana fixes the monthly maximum at $25. Persons whose yearly incomes exceed the maximum pension are ineligible, and corresponding limits on accumulated property are fixed. Residence, citizenship, and character requirements are similar to those found in foreign laws. Administration of the Kentucky, Montana, Nevada, and Wisconsin laws, contrary to the recommendation of the standard bill, is left in the hands of county officials and payments are to be made from county funds.[3] In the light of past experience with mothers' pension legislation this appears to be unfortunate, and to bode ill for liberal administration. These laws, however, are too recent to afford data on which to base a final judgment.

Straight pensions for service are granted both by governments and by private employers. In America such pensions

[1] State Board of Control *v.* Buchstegge, (18 Arizona 277, 158 Pac. 837) 1916.

[2] Busser *v.* Snyder, 128 Atl. Reporter 80, 1925.

[3] In Wisconsin the state is to reimburse the county for one-third of the expense.

are provided by some state and municipal governments for certain classes of employees, such as policemen, firemen, and teachers, though contributory pension systems for such public servants are more usual. The federal government has also established pensions in the army and navy, with particular generosity toward Civil War veterans. In several European countries, furthermore, workers in the government-owned industries are granted pensions, as for example, in the tobacco works of Italy and France. Finally, pensions are granted to their employees by some private concerns but their social importance is not great.

(5) *The Present Problem in the United States*

"Strange as it may seem," declared a leading American authority in 1912, "the United States is the only great industrial nation in the civilized world that has not already attempted a practical and permanent solution of the problem of old age and dependency."[1] Despite the scattering provisions of trade unions, fraternal organizations, and private employers, this problem was obviously still unsolved in 1926 except in those few states where pension laws were already in force. A "practical and permanent solution" for the United States involves action by forty-eight separate local legislatures—since Congress is powerless in this matter and therein, to some extent at least lies the explanation of this "strange" situation. Constantly growing interest and widespread attempts at legislation indicate, however, that there may be a material change within the next decade. In 1925 alone old-age pension bills were introduced in more than a dozen states. Official commissions in some half-dozen states had by 1926 reported in favor of such laws and furnished voluminous evidence of the seriousness of the problem.[2]

[1] Squier, *Old-age Dependency in the United States*, p. 325.

[2] Pennsylvania Commission on Old-age Pensions reported in 1919 without specific recommendation but presented a straight pension bill to the 1921 legislature; Montana Industrial Accident Board made a special study of old-age pensions, 1922, and favored some pension scheme but recommended further study to determine best method; Ohio Health and Old-age Insurance Commission, 1919; Massachusetts Commission on Pensions, 1925; Indiana Committee Appointed to Investigate Old-age Pensions, 1925; and the Virginia Legislative Committee on Old-age Assistance, 1926, reported in favor of straight old-age pensions.

On the basis of an investigation of old-age poverty made in Massachusetts by a special commission on old-age pensions of that state, it is estimated that "approximately 1,250,000 of the people of the United States above sixty-five years of age are dependent upon public and private charity, to the amount of about $250,000,000 annually. Thus far, one person in eighteen of our wage-earners reaches the age of sixty-five in penury; and the indications are that the proportion of indigent old is increasing."[1] The Pennsylvania commission reported that 43 per cent of the population fifty years of age and over had no means of support other than their own earnings, and that only 38 per cent of the general aged population possessed personal property. The Massachusetts commission report of 1925 stated that, entirely aside from persons then actually in receipt of public or private organized charity, 6.4 per cent of the ostensibly independent population over sixty-five had annual incomes under $100 and an additional 16.8 per cent had no income at all. Approximately 31 per cent had no accumulated property. Declining earning power coupled with the absence of resources is almost certain to compel many to ask for charity. The Ohio, Pennsylvania, and Massachusetts investigations, as well as more recent reports from states where pension applications have been analyzed, showed that old-age dependency was largely a native problem and not one imported by immigrants. Existing pension systems are an insignificant factor in meeting the situation; in Ohio the commission estimated that, exclusive of federal and state pensioners, only 3,000 persons were pensioned out of an estimated population of 304,000 persons sixty-five years of age and over. The Massachusetts estimate, including federal, state, and municipal pensioners, showed about 11 per cent of all persons over sixty-five in receipt of pensions in 1925. Relief afforded by private homes for the aged and by almshouses provided for a larger number. But various investigations showed that charity was insufficient, while several commissions found it necessary to criticize severely the character of the care and treatment afforded by public almshouses. Reports from states where pension systems have been put into operation, or the preliminary steps taken, indicate, moreover, that the per capita cost of

[1] Squier, *Old-age Dependency in the United States*, p. 324.

maintaining aged persons in almshouses greatly exceeds the average pension payable under a typical American law.[1] Persons now in almshouses because of old age alone could be more economically and more humanely maintained under a pension system, the commissions point out, while the resultant saving of money would go far toward pensioning other needy persons.

With this growing body of official information to refute the extravagant fears of certain opponents of the legislation, there is indication that state legislatures throughout the country may soon accept the principle of old-age pensions almost as generally as they have accepted the once feared principle of workmen's compensation.

4. Widows' and Orphans' Insurance

Insurance for the protection of widows and orphans, or, as it is ordinarily called, life insurance, is furnished by practically all fraternal societies, many trade unions, some establishment funds, and by private life insurance companies. In some countries, such as Great Britain, France, Italy, Russia, and Canada, the government has undertaken the business of life insurance; in the United States we have state life insurance in Wisconsin, and in Massachusetts there is a system of life insurance administered by savings banks under state supervision.

(1) *Voluntary Life Insurance*

Life insurance, sometimes for enormous amounts and paid for by annual or quarterly contributions or premiums, is now a well-established method of providing for the future among the moderately well to do and the wealthy. In order to bring the poorly paid wage-earner under the system, a special form of life insurance had to be devised, known as "industrial" or "prudential" insurance as opposed to the "ordinary" type. Under industrial insurance the policy amounts are much

[1] *Report of the Pennsylvania Commission on Old-age Assistance,* 1925; *Biennial Report of the Nevada Superintendent of Old-age Pensions,* 1923-1924; *Report of the Old-age Pension Commissions of the Several Counties of Montana to the State Auditor,* December, 1924.

smaller, usually providing only for the burial of the insured, and, to facilitate payment, premiums are collected weekly or monthly, by a vast army of agents. This method of collection, however, results in the increase of administrative expenses and, consequently, in higher rates. Another cause of higher rates in industrial insurance is the higher death rate among wage-earners. Thus, even in purchasing decent burial the wage-earner is obliged to pay a higher rate of insurance than does his more prosperous neighbor. The more recently developed system of "group" insurance, by which the employees of a plant are covered under a group of policies sold through the employer and paid for collectively by him, usually with partial reimbursement from the workers, eliminates this excessive overhead cost, but depends on the good will of the employer for its inception and continuance and so is available to only a relatively small number of wage-earners.

State insurance, as well as insurance furnished by fraternal societies, trade unions, establishment funds, and mutual assessment societies, is less expensive but still outside of the reach of many working people. Moreover, because the insurance is voluntary, the very families most in need of protection are often left without it. These defects, as in the other branches of social insurance, have led to the introduction of the compulsory principle.

(2) *Compulsory Insurance*

Compulsory widows' and orphans' insurance, the newest branch of social insurance, has been adopted by 1926 by a dozen [1] countries, approximately half of which had passed such legislation since the close of the World War.

The French law, the first of its kind, allows a small pension to the widow and orphans of a person insured under the compulsory old-age assistance law of 1910. The size of the pen-

[1] A 1925 study of the International Labor Office, *General Problems of Social Insurance* (Studies and Reports, Series M, No. 1), mentions the widows' and orphans' insurance schemes of Austria, Belgium, Bulgaria, Czecho-Slovakia, France, Germany, Italy, Luxemburg, Netherlands, Portugal, and the Serb-Croat-Slovene Kingdom. In 1926 a similar law went into effect in Great Britain.

sion is determined, within certain fixed limits, by the number of dependents.

The laws of other countries have also established these survivors' pensions as a branch of the old age and invalidity insurance schemes. The pensions are usually equal to a specified fraction of the old-age or invalidity pension received by or due the deceased, but under a few laws the survivors' pensions are determined directly by the contributions of the insured or in proportion to his scale of wages. In 1926 wage-earners were covered under all the laws except Austria's, which applied only to certain salaried employees. A few countries, for example, Germany and Czecho-Slovakia, covered both salaried employees and manual workers under these survivors' benefit schemes.

(3) *Mothers' Pensions*

Another method of dealing with the problem of widowhood and orphanhood is by means of mothers' or widows' pensions, paid to certain classes of mothers with dependent children. These pensions, however, are straight grants by the government. Such systems existed in 1925 in Denmark, New Zealand, several Canadian Provinces, and most American states.[1]

The movement in this country is particularly interesting. Here the pressing problem of widows' and orphans' poverty and helplessness, instead of giving rise to social insurance measures, has resulted in a sudden wave of legislation providing straight pensions, usually upon condition that the mother is found capable of providing a proper home for her child. Indeed, a leading argument in behalf of this legislation is that it is better to pay the mother for taking care of her child than to expend the same amount in financing institutions, in even the best of which the death rate is abnormally high. In the nine years 1911-1919 thirty-nine American states, Alaska and Hawaii enacted such laws. By July 1, 1926, three more

[1] For foreign laws see *General Problems of Social Insurance*, International Labor Office (Studies and Reports, Series M, No. 1). For American laws see *A Tabular Summary of State Laws Relating to Public Aid to Children in Their Own Homes*, United States Children's Bureau, Legal Chart No. 3, Revised to January, 1925.

states and the District of Columbia had followed suit. The surprising rapidity with which this provision has gained recognition in American legislatures is a significant indication both of the great need of public action and of the growing conception of the state as having a duty toward its citizens, two of the underlying ideas of social insurance.

5. Unemployment Insurance

Finally, the destitution due to unemployment, until recently considered a matter of purely individual concern, or at best as an occasion for charitable activity, is now beginning to be recognized as an evil which must be met by the coordinated forethought of society as a whole. The demoralization of individuals and communities by prolonged and widespread deprivation of income due to involuntary idleness, it is now rather generally agreed, should no longer be allowed to continue unchecked. Among the results of the first official International Labor Conference in 1919 was the recommendation that each of the forty-one member countries establish "an effective system of unemployment insurance, either through a government system or through a system of government subventions to associations whose rules provide for the payment of benefits to their unemployed members."

(1) *Voluntary Out-of-work Benefits*

In warding off the financial hardships of unemployment, individual action and charity have been found just as inadequate as they were in protecting against the financial hardships due to accident, ill health, or old age. Here again the collective method of insurance has demonstrated its superiority. Unemployment insurance originated among labor organizations, and at first the cost of this insurance was borne by the workers themselves without any outside assistance. This form of unemployment insurance has achieved a considerable success in the important European countries. In the United States, on the contrary, only a few unions are known to pay out-of-work benefits. A recent study of the United States Bureau of

Labor Statistics [1] revealed that in 1924 only three [2] American unions had nationwide unemployment insurance schemes in actual operation; that four had formerly run, but recently abandoned them; and that thirteen reported one or more affiliated locals operating unemployment insurance funds; while fifteen national unions excused their unemployed members from paying union dues, but made no further provision for unemployment.

In addition to trade unions, fraternal societies in some countries pay a regular out-of-work benefit. Plant unemployment insurance funds have also been established by a few outstanding employers for their own employees.[3] Recent substantial experiments in the United States provide, in addition, for unemployment funds established and administered jointly by workers' and employers' organizations throughout a local industry. The first scheme of this sort was inaugurated in 1921 in the Cleveland ladies' garment industry, and so far they are confined almost entirely to the clothing trades of the larger cities.[4] Such plans depend on the continued agreement between employers' and workers' organizations, and it is too soon to predict their result. At best, however, they can supply a solution only for highly organized trades.

(2) *The Ghent System*

Voluntary schemes by which employers assume a part or all of the burden are relatively rare. Unassisted trade union unemployment insurance, however, with the cost borne by the workers alone, is a heavy burden on them, comparatively few are able or willing to insure, and adequate benefits seldom can be paid. In order to encourage insurance, a plan was

[1] "Trade Union and Joint Out of Work Benefit Plans," by Margaret Gadsby, United States Bureau of Labor Statistics, *Monthly Labor Review*, July, 1924.

[2] Diamond Workers' Protective Union of America; Deutsche Amerikanische Typographia, and the Amalgamated Society of Carpenters and Joiners.

[3] See description of outstanding American schemes in "Establishment Unemployment Insurance Plans," by Margaret Gadsby, United States Bureau of Labor Statistics, *Monthly Labor Review*, April, 1924.

[4] *American Labor Year Book*, 1925, p. 88. See also "Trade Union and Joint Out of Work Benefit Plans," by Margaret Gadsby, United States Bureau of Labor Statistics, *Monthly Labor Review*, July, 1924.

devised by which governments, most often municipal, granted subsidies to trade unions furnishing unemployment insurance. This is the principle of the famous Ghent system, which was first introduced in the city of Ghent in Belgium in 1901. The Ghent idea was rapidly adopted with some modifications, not only in many cities in Belgium, Germany, France, Switzerland, Italy, and the Netherlands, but also on a statewide basis in Denmark, France, Norway, and Great Britain (for certain trades only)[1] before the World War; and six additional countries, the Netherlands, Finland, Spain, Belgium, Czecho-Slovakia, and Switzerland, by 1925.[2] In many cases the trade-union funds are subsidized both by the state and the municipality. Subsidies are based either on benefits payable or on contributions received and sometimes represent as much as one-half to two-thirds of the total allowance received by the insured. In Great Britain the trade unions which were outside of the compulsory unemployment insurance law of 1911 received a state subsidy of not over one-sixth of the total amount of the out-of-work benefits paid. To meet the exceptional unemployment in the early days of the war, Great Britain temporarily extended and increased the subsidy to unions paying unemployment benefits.

The system of government subsidized unemployment insurance has undoubtedly stimulated provision against unemployment.[3] On the other hand, it is generally recognized that the advantages of optional subsidized insurance are not far-reaching enough to offset its limitations, perhaps the most important of which is its failure to attract a sufficiently large number of workers. This limitation is partly offset by the growing practice among European unions of requiring all their members to join the unemployment insurance schemes. Unless, however, a country is practically 100 per cent unionized even this form of compulsion leaves many workers unprotected. The exemption of employers from any direct share in the cost of the insurance, with the consequent loss of a valuable stimulus to unemployment prevention, is another serious disadvantage

[1] These subsidies were discontinued when the scope of compulsory unemployment insurance was broadened by the Act of 1920.

[2] International Labor Office, *Unemployment Insurance* (Studies and Reports, Series C, No. 10), 1925.

[3] See I. G. Gibbon, *Unemployment Insurance*, pp. 104, 105.

of voluntary subsidized schemes. The lesson taught by the other branches of social insurance points to compulsory insurance as the solution of the problem.

(3) *Compulsory Unemployment Insurance*

Compulsory unemployment insurance was first introduced in the city of St. Gall, Switzerland, in 1894. After a two years' trial the system, owing to defective administration, was adjudged a failure and was discontinued. The only countries where compulsory unemployment insurance was in force in 1920 were Great Britain, where it went into operation on July 15, 1912, and Italy, where it went into effect on January 1, 1920. By 1925 Russia, Austria, Queensland, Poland, and the Irish Free State had been added to the list, and in addition Germany had in operation a scheme of unemployment relief to which employees and employers were required to contribute, but which was distinguished from true insurance in that contributions entailed no legal right to a specified benefit, but merely helped to build up a fund from which the authorities relieved cases of destitution due to unemployment.[1] Bulgaria passed a compulsory unemployment insurance act in 1925 to take effect in 1926.

In its original form the British act applied to seven groups of trades, but the administrative authorities were permitted to extend the range of the system. The selected trades were (1) building, (2) construction of works, (3) ship-building, (4) mechanical engineering, (5) iron founding, (6) construction of vehicles, and (7) sawmilling; and they were chosen because in them the extent of unemployment was greatest and most accurately known. About 2,500,000 workmen were included, out of 15,000,000 in the country, or 16 2/3 per cent. An amending act passed in 1916, in anticipation of the cessation of war, extended the insurance temporarily to include about 1,000,000 workers engaged in munitions manufacture. The employer and employee contributed equal amounts of 5 cents each week; to this the government added 3 1/3 cents, which was one-third of the combined contribution of employer and

[1] International Labor Office, *Unemployment Insurance* (Studies and Reports, Series C, No. 10), 1925.

employee. This premium entitled the worker in case of unemployment to the sum of $1.75 a week for not more than fifteen weeks in any one year. No benefit was paid for the first week of unemployment, and the worker had to be insured five weeks for every week of benefit he claimed. The limitation to fifteen weeks a year did not in practice work any serious hardship under normal industrial conditions. In a study of 130,000 cases of unemployment it was found that only 5 per cent of the recorded unemployment among union men and only 1.2 per cent among non-union men were left without benefit because of this restriction.[1]

To safeguard the workers' interests an unemployed man was not compelled to take work in a place where a trade dispute was on, or at wages below those he usually received or less than those current in the community. Another clause with a similar purpose provided that any insured workman over sixty years of age, who had been insured for ten years and who had paid 500 contributions, was entitled to a refund of his total payments, less his total benefits, with compound interest at 2½ per cent.

As a protection to the employer, a worker was refused benefit if he struck, quit without due cause, or was discharged for bad conduct or inability to do the work. Furthermore, an incentive to regularize production, to avoid large turn-overs of labor, and thus to prevent unemployment, was held out to the employer in the clause entitling him to a refund of one-third of his own contributions for each worker retained in his employ not less than forty-five weeks in a year.

The administrative machinery of the act was simple. The employee was required to secure an unemployment insurance book, which on taking employment was deposited with the employer. The latter was requested to paste in the book on pay day the stamps representing his own and the employee's contribution, deducting the worker's portion from his wages. The weekly payments were transmitted through the post office, which sold the stamps, to the unemployment insurance fund, which, in spite of the smallest of the individual contributions, totaled about $2,500,000 a year for the 2,500,000 insured

[1] Great Britain, Board of Trade, *Report of Proceedings under Part II of the National Insurance Act, 1911*, p. 13.

workers. If the insured worker lost his place, he received from his employer his insurance book, which he was then to deposit in the nearest labor exchange or insurance office, one of which is within five miles of every considerable group of workers in the kingdom. He was thus automatically registered as looking for work, and so an abuse of the system by the "work-shy" man was avoided. In the year ending January 17, 1914, the sum of $2,488,625 was paid out by this system in unemployment benefits.

The signing of the armistice in November, 1918, and the prospect of widespread unemployment not only among demobilized soldiers and sailors and munition workers, but also in the trades supplying raw materials, led the British government to provide temporarily a system of so-called non-contributory unemployment insurance or "out-of-work donations." Demobilized soldiers and sailors and unemployed civilian workers were declared eligible for a limited amount of benefit at the rate of $7.07 a week for men and $6.01 a week for women. Benefit was paid only to those who fulfilled the conditions of involuntary unemployment as established by the 1911 unemployment insurance act, and the same machinery of courts of referees and umpires was utilized to decide disputed claims for benefits. These special donations were originally supposed to terminate in November, 1919, but, in fact, were continued by four separate extension acts the last of which expired in March, 1921. The extension acts applied only to ex-service men and seamen, however, and made certain changes in the amount and duration of the donations.

In the meantime the compulsory contributory act of 1911 was revised by the act of 1920. The benefits of the system were extended to practically the whole working population of Great Britain with the important exception of agricultural laborers, domestic servants, public employees, and non-manual workers earning over $1,250 (£250) a year, the previous coverage of the act being more than tripled by the addition of over eight million new insurers.[1] Contributions and benefits were raised, the employer and employee each contributing eight cents a week and the state four cents toward a maximum weekly

[1] "English Experience with Unemployment Insurance," by Leo Wolman, *American Labor Legislation Review*, March, 1926, p. 37.

benefit of approximately $3.75, payable for fifteen weeks in a year.[1] The waiting period was reduced to three days, and six weeks' contributions were required as the prerequisite for each week of benefits. Refunds to employers for steadily employed workers were discontinued. Subsidies to trade unions were dropped, but the arrangement was continued whereby unions paying unemployment benefits of their own were permitted also to administer the payment of state benefits to their members, and this privilege was extended to certain other approved societies. The widespread demand for insurance by industry was recognized in a provision which permitted the employers and workers throughout an industry to set up an unemployment insurance scheme approved by the Minister of Labor and thereupon to withdraw from the state-operated system. These "special schemes," which had to meet certain minimum requirements, were to be subsidized to the extent of three-tenths of the state's contribution for the same number of employees insured under the general plan. The remaining provisions of the 1920 act were for the most part like those of the original law.

Insurance by industries, contemplated under the "special schemes" provision of the 1920 act, has never been developed in Great Britain. Immediate interest was shown and the Joint Industrial Councils of no less than nine[2] industries had schemes in the course of preparation in March, 1921. Within the next few months, however, unemployment, which had gradually increased since the end of 1920, became so acute[3] that emergency measures were necessary under even the established state plan. The government, feeling that the crisis provided an inopportune time for new experiments, suspended the authorization of "special schemes" in July, 1921. Only one special scheme which had already been approved for the private insurance industry was put into effect.

[1] These figures apply to adult men. Contributions and benefits are differentiated for women, boys, and girls.

[2] Ministry of Labor, *Labour Gazette*, March, 1921.

[3] Trade-union returns to the Ministry of Labor showed the following percentages of unemployment during the early months of 1921: 6.9 per cent end of January, 8.5 per cent end of February, 10 per cent end of March, 17.6 per cent end of April, 22.2 per cent end of May, and 23.1 per cent end of June.

This serious unemployment crisis which continued acute in Great Britain until 1924 necessitated the administration of relief to a large part of the working population and this was accomplished largely through the machinery of the unemployment insurance act. Allowances to dependents of the insured were inaugurated, the amount and duration of benefits were increased, and the requirements for payment of contributions gradually relaxed until practically continuous benefits were payable to insured persons regardless of the number of their contributions. The benefits allowed in advance of contribution payments, however, were charged against the individual's future account so that even during the relief period the theory of insurance was preserved.[1] The insurance fund, of course, was supplemented by large loans from the Treasury to make this policy possible; but these loans have been treated as genuine debts of the fund, which it is gradually repaying with interest.[2] The relaxation of the strict insurance principle to meet the emergency problem was effected through a succession of amendatory acts beginning with the Act of March, 1921.[3] Finally, by Act of August, 1924, provision was made for re-establishment—at the end of the deficiency period—of the true insurance system largely as it was in 1920, though with some increase in the amount and duration of benefits and the scale of contributions and other changes in the details of the scheme. This act did not alter employers' and employees' contributions which had been raised to yield a surplus over current needs so that the solvency of the fund might eventually be reestablished. Contributions were further revised and the waiting period increased to six days by the Act of August, 1925.

Most of the other compulsory unemployment insurance acts are not unlike Great Britain's in general plan. They usually cover the whole adult wage-earning population with certain specified exceptions. Agricultural workers, domestic servants, public employees, independent workers, and home workers are

[1] "Unemployment Insurance Is Not a Dole," by Albert Mansbridge, *American Labor Legislation Review,* March, 1926, p. 45.

[2] "English Experience with Unemployment Insurance," by Leo Wolman, *American Labor Legislation Review,* March, 1926, p. 38.

[3] Unemployment Insurance Acts of March, 1921; July, 1921; November, 1921; April, 1922; July, 1922; March, 1923, and April, 1924.

frequently excluded, as also, occasionally, are workers earning over specified amounts. Expenses are usually divided between employees, employers, and the state, the proportion contributed by the workers themselves varying considerably. In Russia, on the other hand, employers bear the entire expense; and in Italy it is divided between employers and employees with no help from the state, though prior to the Decree of 1923 the state made certain contributions toward the reserve fund. Benefits are calculated under some laws as a percentage of the wages of the insured, and under others on the basis of a flat rate for each of several specified wage groups. All the laws except Italy's adjust the benefit to the family status of the insured. Some distinguish merely between married and unmarried men, while others make a more careful adjustment to the actual size of the family. The duration of benefits is limited to a specified period except under the Russian act, the normal periods varying from twelve to twenty-six weeks. Many of the laws, however, provide for prolongation of the benefit in times of industrial crisis or severe individual hardship. Practically all these unemployment insurance schemes are coordinated with extensive systems of public employment offices.

In America, as well as in Europe, the importance of compulsory unemployment insurance is slowly gaining recognition. The oft-recurring periods of general industrial depression and the prevalence of unemployment in the numerous seasonal trades are emphasizing the need for organized social action. In the winter of 1914-1915, particularly, the alarming extent of unemployment called forth general and deep interest, and among the methods most often urged for dealing with this evil was state supervised insurance. During the same winter, unemployment insurance bills were drafted for introduction in several states. These early bills provided for compulsory, contributory insurance, jointly administered by employers and employees under public supervision, and with subsidies to organizations voluntarily entering the system. Ten weeks' benefit was tentatively proposed, with the proviso that the amount should be as large as possible. Refunds to employers who ran their plants steadily, and to workmen who were rarely out of employment, and corresponding penalties for casual labor, were included for the purpose of stimulating regularization of in-

dustry. To obviate unnecessary claims, close dependence upon an efficient system of public employment exchanges was insisted upon.

Insurance provides a dignified method of financial assistance to unemployed wage-earners, the majority of whom would be forced either to seek charity, with all its objectionable consequences, or to suffer privation. The out-of-work benefit, although amounting to but a fraction of the regular wage, is still sufficient to ward off for a time complete destitution; it thus contributes materially toward the preservation of the workers' character and physique during times of unemployment, and prevents their falling into the ranks of the unemployable where they would constitute a much more difficult problem. An indispensable part of such insurance is a system of labor exchange, the activity of which is a powerful means of reducing the amount of involuntary idleness.

Of significance, also, is the pressure which compulsory insurance can exert towards the prevention of unemployment. Workmen's compensation laws have stimulated the development of the "safety first" movement. The activity of the German sickness insurance funds affords demonstration of the preventive possibilities latent in compulsory health insurance. Somewhat similar results can be secured from compulsory insurance against unemployment. With this in mind, the more recent advocates of unemployment insurance in this country have abandoned the idea of employees' contributions and have sponsored measures, in Wisconsin and certain other states, taxing the first cost of unemployment benefits against employers and providing for the organization of an employers' mutual to carry the risk.[1] Recent studies and experiments in regularization of industry have made it increasingly clear that employers and bankers are primarily responsible for unemployment and can, when sufficiently interested, do much through joint and individual efforts to prevent both its seasonal and cyclical occurrences. Direct responsibility for the cost of unemployment insurance—with a corresponding opportunity to minimize that cost—would do much to elicit the necessary interest of

[1] John R. Commons, *Unemployment Insurance; The Road to Prevention*, with a Digest of the 1923 Huber Unemployment Prevention Bill by A. B. Forsberg.

employers and so to stimulate regularization of industry. The indications are that this branch of social insurance can be made to accomplish, with respect to involuntary idleness, a very considerable prevention of the evil itself, which from every point of view is far more important than the payment of benefits. As eloquently stated by Léon Bourgeois, president of the International Association on Unemployment: "To relieve is to wait until the evil has befallen, to attempt to repair it. To relieve is to wait till misery has come, to give alms to the miserable. But alms remains at best a meritorious deed, not a social act." [1] Elimination of the condition which makes relief necessary is the social act contemplated by any adequate system of social insurance.

In this matter, however, as in all matters of labor legislation, the results attained depend in the last analysis upon efficient administration.

[1] Address delivered at the Ghent International Exposition, 1913, *American Labor Legislation Review,* March, 1914, p. 186.

CHAPTER IX

ADMINISTRATION

Notwithstanding all that has been said regarding the progress of legislation for the protection of the workers, it is scarcely worth consideration if the laws are not enforced. More important than the hasty enactment of additional laws is the adoption of methods of administration that will enforce them. It is easy for politicians, or reformers, or trade-union officials, to boast of the laws which they have secured for labor, and it is just as easy to overlook the details, or appropriations, or competent officials, that are needed to make them enforceable. It is easy to say that little or nothing can be done by changing the "machinery of government" and that the real thing to do is to get "better officials" to enforce the laws, and better judges to interpret them, but it is only through the "machinery of government" that such officials are found and selected, and that judges can have the facts needed for interpretation. Administration is more than mechanism. It is a method of legislation. It is the means of investigating, drafting, and adopting enforceable laws. It is the means of getting and keeping competent officials. It is the method of determining what authority or powers the officials shall have, how they shall execute the laws, what procedure they shall follow in court, what facts they shall investigate for the use of the court in its duty of interpretation. Administration is legislation in action.

In a constitutional government, executive officers are not supposed to go out with a club and, on their own initiative, force people into obeying what they happen to think is the law. Before they act, they are supposed to investigate. The legislature, too, is assumed to be a body possessed of all the facts, and its acts are unconstitutional when they disregard essential facts that could be ascertained by investigation. The court, through many centuries of experience, has developed

the law of evidence and the procedure of investigation for the trial of individuals who are charged with the violation of law. Finally, when the higher court passes upon the constitutionality of the law itself, it does so with reference to whether the facts are such as call for the law and whether the law deals with the facts in accordance with the higher law of the constitution.

Thus, each department of government is an investigating body. Only by investigation can each be restrained from the arbitrary and capricious acts that make despotism abhorrent. This is the significance of "reasonableness," which runs through every requirement of the constitution. Reasonableness is ascertained by investigating *all* the facts and giving to them "such weight as may be just and right in each case." [1] Thus, we have executive, judicial, and legislative investigations designed to guide each department of government in dealing with all the facts in its own field.

But modern industrial conditions have become so complex, and the laws deal with such a variety of facts, that a fourth department of government is emerging whose purpose is primarily investigation. This is administration. If administration is legislation in action, it is because administration is investigation. It unites in one department the investigating activities of all departments. Let us first consider the executive department and its field of investigation.

1. The Executive

The history of the so-called "factory acts" shows the beginnings of the special kind of investigation needed for the enforcement of labor law. The term "factory act" or "factory legislation" covers all legislation, whether applied to factories or to other establishments, respecting such matters as health and safety of workers, hours of labor, child labor, payment of wages, company stores, and so on. Factory acts are distinguishable from those laws which determine the fundamental rights and duties of master and servant, employer and employee, in the labor contract, such as mechanics' lien,

[1] Smyth *v.* Ames, 169 U. S. 466, 18 Sup. Ct. 418 (1897); Freund, *Police Power*, 1904, p. 58.

wage exemption, employers' liability, and the law of conspiracy. The distinction is not always clear because the line between the two is drawn differently at different times and in different countries. In general, we may say that by factory legislation is meant that side of labor legislation which requires officials for continuous inspection and enforcement, whereas other labor laws are enforced only when a private individual brings a case in court. The distinction tends to disappear in proportion as special administrative machinery is adopted for the enforcement of other laws. For this reason the term "labor legislation" is taking the place of "factory acts."

The early factory laws provided no special officers for their enforcement. It was assumed that complaints would be made by the injured employees, and it was merely provided that the ordinary officers attached to the court, such as sheriffs, policemen, prosecuting attorneys, should attend to the prosecutions on complaint. Such is even now the theory and practice in some states, especially in the South.

It required several years to discover the futility of this kind of administration. Employees would not make complaints for fear of being discharged. The officials had other duties more urgent. They were local officials, usually afraid of the voters.

The next step, beginning in the decade of the 'sixties, was the creation of a class of special state police, known as factory inspectors, whose duty it was to investigate the conditions in the factories, to get their own evidence of violations and then to conduct the prosecutions without calling upon employees to testify.

The first state to appoint this class of special police was Massachusetts, in 1867. Since that time the method has been adopted in most of the states and the largest force of inspectors in any state is that in New York, where 214 were employed on January 1, 1926.

The creation of this special type of police was not a complete solution of the problem of effective administration. So long as these inspectors are considered as executive officials, they have a limited and special purpose. The chief object is to secure evidence for prosecutions against violators of the law. Having secured their evidence, they must take it to the prosecuting attorney or district attorney, who then reinvestigates

the facts in order to determine if there is a case made out that will probably result in a conviction when tried in court. Finally, when the case is brought to trial, the court again investigates all the facts, calling witnesses on both sides and providing for their cross-examination. It follows precise rules of evidence, rejecting what is immaterial to the point to be decided. This evidence may be heard and passed upon by a jury. The entire procedure of the executive, the prosecutor, and the court in reaching a decision and enforcing the law turns upon an investigating of the facts of violation.

For various reasons, the enforcement of labor law in American states through investigations by the old type of factory inspectors has come to be recognized as ineffective. The inspectors were not trained for their work; they were frequently changed; they were poorly paid, and they had but little opportunity for promotion and a professional career. Their number was usually inadequate for the amount of work required. Much of their time was often given to gathering and publishing large volumes of belated statistics that had but little value as an aid either to their own administration or to the legislature in improving the laws. Considerable attention has been given to these deficiencies and they are justly considered to be the most important problem of labor legislation. Useless statistics are giving way to timely bulletins on safety, health, and other specific conditions of labor. The New York State Factory Investigating Commission was created, after a deadly factory fire, to inquire why it was that the laws were not enforced.[1] The United States Bureau of Labor investigated the enforcement of woman and child labor laws.[2] The American Association for Labor Legislation devotes a large part of its attention to the improvement of administration.[3] Out of these investigations and a widespread distrust of the existing methods of factory inspection have come serious attempts to improve the character of administration. The more promising of these

[1] See New York State Factory Investigating Commission, *Preliminary Report*, 1912, pp. 13, 14.

[2] *Report on Condition of Woman and Child Wage-earners in the United States* (Senate Doc. 645, Sixty-first Congress, Second Session), 1910-1913.

[3] See its official organ, the *American Labor Legislation Review*, published quarterly, beginning 1909.

attempts are described in the following pages. They involve not only the executive branch of government, but also the legislative and judicial branches.

2. The Legislature

In an executive investigation no question is raised as to the reasons for the enactment of the law itself. The question is merely whether the law was violated or not. Investigations take a much wider scope when the matter is being prepared for the legislature upon which it shall proceed to enact a law. The first investigations on a subject of legislation are usually made by private parties or by persons whose object it is to secure legislation. In the field of labor the American workingmen's organizations, as early as 1832, published reports upon the conditions of labor showing the need of new laws for their correction. These crude investigations have been followed and multiplied by a great variety of associations and organizations. In the decades of the 'forties and 'fifties industrial congresses were held in different cities and investigations of shop and factory conditions were made. The International Workingmen's Association, founded by Karl Marx and the British trade-unionists in 1864, and spreading to the United States, contained as one of its objects the collection of information and carrying on of investigations of labor conditions in different countries of the world. The National Labor Union in 1868, the industrial congresses of 1873 and 1874, the Knights of Labor and the American Federation of Labor have all in turn conducted investigations on all the aspects of labor problems that in their opinion needed legislation.

In the decade of the 'eighties private organizations like the Consumers' League began investigations, especially of child labor and sweating systems. The National Child Labor Committee, founded in 1904, has had a systematic plan and a wide field of investigation. In 1900 the first international association for the investigation of labor conditions in all countries was organized at the Paris Exposition, under the name of the International Association for Labor Legislation. Up to the time of merging with the International Association on Unemployment and the International Committee on Social Insurance

in September, 1925, it had organized sections in fifteen countries.[1] In some cases affiliations were made with previously existing private organizations. The object for which the International Association was founded was to bring about uniform legislation through treaties entered upon by independent governments. The procedure adopted was to hold international biennial congresses in Switzerland, at which the conditions of labor and the laws of different countries were reported upon and plans for uniform laws were drafted. Through the courtesy of the government of Switzerland the diplomatic representatives of the different nations would then be invited to meet and formulate "conventions" carrying out, as far as possible, the plans recommended by the preceding congress of the Association. When these "conventions" were agreed upon, the several countries were expected to enact the desired legislation and enforce it in their own jurisdiction. When any country adopted the recommendations of a convention, it became equivalent to a treaty between that and other countries which had acted in the same way. The first international "conventions" of this kind were those of 1906, forbidding the night work of women[2] and the use of poisonous phosphorus in the manufacture of matches.[3] The former was quickly adopted by fourteen nations and the latter by eleven.

The characteristic activities of the International Association and its fifteen national sections have been scientific investigations conducted with the definite object of securing needed legislation. Like other private associations its work has been largely propagandistic and did not carry official weight. However, the International Association, with permanent headquarters in a government building at Basle, Switzerland, was in receipt of subventions from twenty-two different national governments. In this respect it marked the beginning of an affiliation between private investigations and those conducted by government.[4] As frequently occurs with pioneer social organizations, certain of the activities of the International Association

[1] Austria, Belgium, Denmark, England, Finland, France, Germany, Holland, Hungary, Italy, Norway, Spain, Sweden, Switzerland, and the United States.

[2] See "Night Work," p. 288.

[3] See "Prohibition of Substances or Instruments," p. 391.

[4] See Bibliography, p. 579.

have now been taken over officially, in this case by the International Labor Office instituted under the League of Nations.

There were two other allied associations, the International Association on Unemployment and the International Committee on Social Insurance. In 1922 steps were taken to merge the three associations, and this was finally brought about in September, 1925, at a representative meeting at Berne. The name of the present organization is International Association for Social Progress.

The American section of the International Association for Labor Legislation was organized in 1906 with the object of investigating conditions underlying labor laws and disseminating information leading to the enactment and efficient enforcement of protective legislation. It has conducted investigations, held national conferences, published reports, drafted bills, and secured the enactment into law of progressive standards. While known as the American Association for Labor Legislation, it has served as the American arm of all three international associations, social insurance and unemployment as well as labor legislation. It continues as the American section of the International Association for Social Progress.

Governmental study of labor conditions in America also dates back to the early part of last century. As early as 1838 the state legislature of Pennsylvania conducted an investigation of women and child labor in the factories of that state.[1] Massachusetts followed in 1845. Many states and the national government have at different times carried on investigations of this kind for special purposes by temporary committees of the legislature or by commissions appointed for the purpose. During the years 1910 to 1915 there were nearly thirty state commissions and one federal commission for the study of industrial accidents and the drafting of laws on workmen's compensation. Another notable example is the Factory Investigating Commission of New York, whose careful studies led to the adoption in 1914 of a large number of labor laws by the legislature of that state. In the broader field of federal investigations, a committee of the Senate of the United States in 1885 held extended hearings on the subject of capital and labor. The Industrial Commission, composed of members of Congress

[1] Pennsylvania Senate, *Journal*, Vol. II, 1837-1838.

and appointees of the President, made a report of nineteen volumes on the same and other subjects in 1901. Other temporary federal commissions have been the one on Immigration in 1911, and the Commission on Industrial Relations of 1913.

The origin of these temporary legislative investigations was a demand on the part of private organizations either for definite legislation or for official inquiry which would have greater weight through the power of compelling witnesses to testify and the conclusiveness which could not be secured by private societies. Their intent was both to inform the public and to aid the legislature.

The first state in the world to establish a permanent bureau for the investigation of labor conditions was Massachusetts in 1869. Under the names of bureau of labor statistics, bureau of labor, and similar names, such permanent machinery of investigation has been established in about forty states, by the federal government with its Department of Labor, first established in 1884, and by all national governments where the problem of labor and capital has become prominent. These bureaus were at first established primarily on the petition of labor organizations.[1] Their scope has been broadened in some cases, but their largest activity has been the collection of statistics of wages, hours, and conditions of labor. At times they are called upon by the legislature to make investigations which otherwise would have been conducted by legislative committees or temporary commissions, such as the investigation of woman and child labor by the federal Bureau of Labor in 1908.

A certain ineffectiveness of these bureaus has sprung from their desire, as permanent bureaus, to maintain a non-committal attitude in presenting facts, and they generally refrain from making recommendations for legislative action. Most of these bureaus, moreover, also have charge of the enforcement of the various labor laws, or are a part of a labor department that is charged with the enforcement of labor laws. Because of inadequate appropriations and the necessity of giving first attention to the enforcement of the laws, the tendency has been to abandon special studies and the collection of statistics, except as a by-product of the work of enforcing the laws.

[1] Powderly, *Thirty Years of Labor*, 1889, p. 303.

The fullest development to date of official bureaus created for the sole purpose of ascertaining facts as a basis for legislative enactment is found in the international labor organization set up by the treaty which concluded the World War. Part XIII of the treaty declares that permanent peace such as is sought by the League of Nations "can be established only if it is based on social justice," and that the failure of any nation to adopt humane labor standards "is an obstacle in the way of other nations which desire to improve the conditions in their own countries." To arrive at desirable international minimum protective standards a permanent International Labor Office is created, with quarters at the seat of the League of Nations. The office is to be in charge of a governing body of twenty-four persons, twelve representing the governments, six the employers, and six the workers of the affiliated countries, selected for three-year terms. Eight of the twelve government members are to represent the eight nations of chief industrial importance.[1] The governing body appoints a director of the office, who chooses the staff, "a certain number" of whom must be women. The duties of the organization include collecting and distributing labor data, conducting investigations, publishing a periodical on employment problems, and preparing the order of business for the International Labor Conferences.

The International Labor Conferences which the office thus assists in conducting are to be held at least yearly at the seat of the League of Nations or at some other place previously selected. They are composed of four delegates from each country attached to the league, divided among the government, the workers, and the employers, in the same proportion as the members of the governing body; namely, two, one, and one, respectively. The labor and employer delegates are to be named by the governments "in agreement with the industrial organizations, if such organizations exist, which are most representative of employers and workpeople" in the respective countries. Delegates may be accompanied by advisers, and when questions affecting women are before the conference at least one of the advisers "should be" a woman. The first annual conference, held in Washington, D. C., during October

[1] At the beginning of 1926, Belgium, Canada, France, Germany, Great Britain, India, Italy, and Japan were the eight nations represented.

and November, 1919, had representatives from some thirty countries. At the seventh annual conference held in Geneva in 1925 fifty-six countries were represented. Recommendations and draft conventions were adopted on such matters as the eight-hour day and forty-eight-hour week, public employment offices, workmen's compensation, reduction of child labor, prohibition of women's work immediately before and after childbirth, prohibition of night work for women and young persons, protection against anthrax, lead poisoning, and white phosphorus poisoning, and establishment of government factory inspection and health services.[1]

The International Labor Office has also established commissions to aid in its work and it has secured the assistance of experts and technical advisers who are members of various commissions or correspondence committees. In 1920 the Joint Maritime Committee was set up. This is presided over by the chairman of the governing body and consists of two members of that body, five representatives of ship-owners, and five representatives of seamen. It advises the office on all maritime questions and considers measures to be adopted to give effect to the decisions of the second session of the conference in 1920 which dealt with maritime questions. The Agricultural Advisory Committee was created in 1922, the Correspondence Committee on Industrial Hygiene in 1922, a Correspondence Committee on Social Insurance in 1923, and a Permanent Emigration Committee in 1925.[2]

3. The Judiciary

In the United States the judicial branch of government may be called upon to make investigations of labor conditions in order to render decisions on the constitutionality of laws enacted by the legislature. These investigations are quite different in character from those, previously described, in a trial for the violation of statutes. In a trial the question to be decided is that of a particular violation of a law. In questions of constitutionality the question is the conformity of the law with the

[1] International Labor Office, *Directory*, 1925, pp. 6-11.

[2] For text of the labor clauses in the peace treaty and of the recommendations and draft conventions adopted by the first conference, see *American Labor Legislation Review*, September and December, 1919.

constitution. Here the court must investigate the question as to whether there is really an evil condition that needs to be remedied; whether this condition is a menace to the public or whether the statute is merely a benefit to private individuals without a public purpose; whether under the actual conditions the legislature confiscates property, discriminates between individuals, and thus denies the equal protection of the laws.[1]

In making such an investigation the court might appoint a referee or master in chancery to take evidence and investigate the facts. This procedure is often followed in the regulation of public utilities. The referee, usually a lawyer appointed by the court, calls before him accountants, engineers, experts, as needed, and makes a report to the court of the facts. Such a practice, however, has not been followed in cases where the constitutionality of labor laws is called in question. This is probably owing to the fact that legislation of this character covers a large variety of subjects, requires a variety of witnesses and extended technical investigations, and that the court is not itself equipped with the staff of investigators competent to secure and furnish the information. The result is that social and economic conditions are not investigated by the court and it is compelled to fall back upon the principles of constitutional law, without full knowledge of the conditions to which the statute applies. Examples of decisions without investigation of conditions are as follows:

The Colorado Supreme Court in declaring unconstitutional

[1] "The principle involved in these decisions is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for government to effect, the legislature transcends the limits of its powers, in interfering with liberty of contract; but where there is reasonable relation to an object within the governmental authority the exercise of legislative discretion is not subject to judicial review." (Chicago, B. & Q. R. Co. *v.* McGuire, 219 U. S. 549, 31 Sup. Ct. 259 (1911).

"In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the federal constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family." (Lochner *v.* New York, 198 U. S. 45, 25 Sup. Ct. 539 (1905). See also "Public Benefit," p. 23, and "Equal Protection of the Laws," p. 28.

a law which limited the hours of labor in smelters to eight a day said:

> This act is an unwarrantable interference with, and infringes, the right of both the employer and employee in making contracts relating to a purely private business, in which no possible injury to the public can result.[1]

Likewise, Judge Gray explained in the following language why the New York court nullified a law prohibiting night work for women:

> I think that the legislature, in preventing the employment of an adult woman in a factory, and in prohibiting her to work therein before six o'clock in the morning, or after nine o'clock in the evening, has overstepped the limits set by the constitution of the state to the exercise of the power to interfere with the rights of citizens. . . . It is clear, as it seems to me, that this legislation cannot, and should not, be upheld as a proper exercise of the police power. It is, certainly, discriminative against female citizens, in denying to them equal rights with men in the same pursuits.[2]

In the following cases the court clearly states that sufficient facts have not been presented to prove that legislation of that character is necessary to conserve the public welfare.

In the first Ritchie case the Illinois Supreme Court said:

> There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing eight hours in one day as the limit which woman can work without injury to her physique, and beyond which, if she works, injury will necessarily follow. But the police power of the state can only be permitted to limit or abridge such a fundamental right as to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare, or safety of society or the public, and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling.[3]

In the Lochner case, where a ten-hour law for bakers was tested, the court had before it only a limited amount of general information on the subject, without any special investigation.

[1] *In re* Morgan, 26 Colo. 415, 58 Pac. 1071 (1899).
[2] People *v.* Williams, 189 N. Y. 131, 81 N. E. 778 (1907).
[3] Ritchie *v.* People, 155 Ill. 98, at p. 113, 40 N. E. 454 (1895).

The majority ruled that the facts were not conclusive to warrant such legislation for the following reasons:

> We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health, or the health of the individuals who are following the trade of a baker. . . . We think that there can be fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee. In looking through statistics regarding all trades and occupations it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also more healthy than still others. To the common understanding the trade of a baker has never been regarded as an unhealthy one. . . . There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty.[1]

The foregoing cases illustrate the attitude of the courts where investigations of the facts have not been brought to their attention, or where they have been compelled to depend upon such knowledge as they themselves might have regarding such facts. In such a case the court might take what it calls "judicial notice" of facts even though they are not presented in evidence, and might rely upon what it considers "common knowledge," or that kind of knowledge which a reasonable person ordinarily well informed might be supposed to have upon the subject. Common knowledge may go still further and include investigations made by private societies or by individuals or attorneys which appear to the court as presenting the facts pertaining to the case. "Courts will take notice of whatever is generally known within the limits of their jurisdiction."[2] "A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts. While the power to take judicial notice is to be exercised with caution and due care taken to see that the subject comes within the limits of

[1] Lochner *v.* New York, 198 U. S. 45, at p. 58, 25 Sup. Ct. 539 (1905).
[2] Quoted from Brown *v.* Piper, 91 U. S. 37 (1875), in People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 639 (1915).

common knowledge, still, when according to the memory and conscience of the judge, instructed by recourse to such sources of information as he deems trustworthy, the matter is clearly within those limits, the power may be exercised by treating the fact as proved without allegation or proof." [1]

The first notable example of a decision on the constitutionality of a law based upon investigations of this kind is that of the Holden *v.* Hardy case, in 1898. In that case the attorney in defense of the law made an investigation of the health of workmen in mines and smelters which was presented in his brief to the court. Upon this information the court took exactly the opposite view of the Colorado court above cited, and held that the law was constitutional upon the following grounds:

> While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, when the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of refining or smelting.[2]

It is to be noticed that while the Supreme Court held that the questions of law—that is, the principles of public benefit and equal protection of the laws—were identical in the Lochner case and the Holden *v.* Hardy case, the former was declared unconstitutional, while the latter was upheld because of difference in fact. Similarly, Mr. Brandeis in his brief in Muller *v.* Oregon quotes the law as propounded in the Lochner case but argues that the facts "establish . . . conclusively, that there is reasonable ground for holding that to permit women in Oregon to work in a 'mechanical establishment, or factory, or laundry' more than ten hours in one day is dangerous to the public health, safety, morals, or welfare." The court, which sustained the law, concurred in counsel's contention, as indicated by the following quotation:

[1] Quoted from Viemeister *v.* White, 179 N. Y. 235, at p. 240, 72 N. E. 97 (1904), in People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 641 (1915). See also cases quoted in Mr. Brandeis' brief, published by the National Consumers' League, in Muller *v.* Oregon, 208 U. S. 412, 28 Sup. Ct. 324 (1908).

[2] Holden *v.* Hardy, 169 U. S. 366, at p. 395, 18 Sup. Ct. 383 (1898).

In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation, as well as expression of opinions from other than judicial sources. In the brief filed by Mr. Louis D. Brandeis for the defendant in error is a very copious collection of all these matters, an epitome of which is found in the margin. . . . The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. . . . When a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long-continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge.[1]

A supreme court may even squarely reverse itself when it finds that a former decision was made without full knowledge of the facts. We have quoted above the language of the New York court, in 1907, in the case of People *v.* Williams, in which the court, without the aid of official investigation, held that a law prohibiting night work for women was unconstitutional. Eight years later the same court overthrew its former decision, when the legislature had again enacted a similar law, this time, however, following the recommendations of the state factory investigating commission. The court justified itself as follows:[2]

It is urged that whatever might be our original views concerning this statute, our decision in People *v.* Williams . . . is an adjudication which ought to bind us to the conclusion that it is unconstitutional. While it may be that this argument is not without an apparent and superficial foundation and ought to be fairly met, I think that a full consideration of the Williams case and of the present one will show that they may be really and substantially differentiated, and that we should not be and are not committed by what was said and decided in the former to the view that the legislature had no power to adopt the present statute. . . . While

[1] Muller *v.* Oregon, 208 U. S. 412, 28 Sup. Ct. 324 (1908).
[2] People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 639 (1915).

theoretically we may have been able to take judicial notice of some of the facts and of some of the legislation now called to our attention as sustaining the belief and opinion that night work in factories is widely and substantially injurious to the health of women, actually very few of these facts were called to our attention, and the argument to uphold the law on that ground was brief and inconsequential.

Especially and necessarily was there lacking evidence of the extent to which, during the intervening years, the opinion and belief have spread and strengthened that such night work is injurious to women; of the laws, as indicating such belief, since adopted by several of our own states and by large European countries, and the report made to the legislature by its own agency, the factory investigating commission, based on investigation of actual conditions and study of scientific and medical opinion that night work by women in factories is generally injurious and ought to be prohibited.[1]

Not only have the courts changed their opinion as to actual conditions because of investigations, but as the investigations educated the public and created sentiment in favor of such legislation, courts have even indirectly reversed themselves on principles of law. The two Ritchie cases in Illinois offer an instance. In the first case (1895) one of the determining objections that the court raised was that "it is questionable whether it (the police power) can be exercised to prevent injury to the individual engaged in a particular calling."[2] In other words, the court ruled that legislation protecting the health of the public or society was a proper exercise of the police power, but that it was improper when aimed to protect individuals against themselves.[3] The court, in the second Ritchie case

[1] See also McLean *v.* Arkansas, 211 U. S. 539, 29 Sup. Ct. 206 (1909), in which the court upholds a screen law on the basis of investigations made by a commission; and State *ex rel.* Yaple *v.* Creamer, 85 Ohio St. 349, 97 N. E. 602 (1912), where the court accepts the findings of a special investigating committee as conclusive "to sustain the exercise of the police power" in workmen's compensation legislation.

[2] Ritchie *v.* People, 155 Ill. 98, 40 N. E. 454 (1895).

[3] For a critical discussion of this principle see Freund, *Police Power*, p. 141; for an acceptable presentation see *In re* Morgan, 26 Colo. 415, 58 Pac. 1071 (1899); and *In re* Jacobs, 98 N. Y. 98 (1885). In Holden *v.* Hardy the United States Supreme Court repudiates this principle, holding that it is constitutional under the police power to enact legislation either to protect the public or to protect individuals against themselves or acts of others. See "Public Benefit," p. 23.

(1910), found it convenient to avoid reference to this principle and scrupulously omits that portion in quoting from the case. According to the second opinion the difference turned, not on principle, but on fact. The court said:

> The second proposition upon which the cases differ is this: the act of 1893 provides for an eight-hour day in which women shall be permitted to work in mechanical establishments, or factories or laundries. Can it be said if the limitation upon the number of hours which women were permitted to work in the designated callings in the act of 1893 had been fixed at ten hours instead of eight hours the court would have held the act unconstitutional as an unreasonable exercise of the police power of the state or that the act would have been held obnoxious to the constitution as special or class legislation? We do not think it can be so said, as there is throughout the opinion a veiled suggestion which indicates that it was the opinion of the court that the limitation of the right to work longer than eight hours was an unreasonable limitation upon the right of contract.[1]

The principle that the police power cannot be exercised to protect individuals against themselves would overthrow a ten-hour law as well as an eight-hour law; but the fact that a ten-hour law is less restrictive than an eight-hour law causes the Illinois court to abandon the principle and to inquire into the facts. By a similar reliance on facts the Supreme Court of the United States holds that an eight-hour law is constitutional and reasonable.[2]

The foregoing illustrations have been cited, among many that might be given, on account of the peculiarly high position occupied by American courts through their power to veto legislation on the ground of unconstitutionality. There has been abundant criticism of the courts for exercising this power, and insistent demands for constitutional amendments abrogating the power have been repeatedly made for more than a hundred years. Without pretending to enter upon a full discussion of these criticisms and demands, except to note the reactionary opinions on later laws during recent years, one thing is apparent—the courts ascribe great importance to re-

[1] Ritchie *v.* Wayman, 244 Ill. 509, 91 N. E. 695, at p. 700 (1910).
[2] Miller *v.* Wilson, 236 U. S. 373, 35 Sup. Ct. 342 (1915). See "Maximum Hours, Women," p. 261.

liable and complete investigations of actual conditions. The foregoing illustrations, as well as others found in this book, indicate that criticism also should be directed against legislatures and administrative authorities who enact and administer laws without reliable knowledge of the conditions with which they are dealing. During the past fifteen years there has been a steady improvement in the quality and methods of administration. Indeed, especially during the post-war years, it would almost seem that whatever advances have been made in the field of labor legislation have come about, because of better administration of the laws, rather than because of changes in the substantive provisions of the laws themselves. Nevertheless, in a majority of states, there is a great need for more efficient administration of labor laws, which will provide for continuous investigation, as well as law enforcement. Thus, we come to a consideration of the modern department of labor, the functions of which are not only of an executive nature, but are also quasi-judicial and quasi-legislative in character, all based upon continuous investigation.

4. The Modern Labor Department

In all of the investigations above mentioned, even those carried on by the best qualified experts, there is lacking the important feature of *prima facie* evidence, or of evidence that is conclusive as to the facts in a trial in court. Those investigations were not conducted under the rules of evidence which the court relies upon, and it therefore treats them merely as common knowledge. Even the factory investigating commission of New York, although created by the legislature, did not make an investigation that, in the eyes of the law, had binding force upon the court. It indicates, however, the kind of investigations which are the next step in the administration of labor laws. This involves the transformation of the bureaus of labor statistics into an integral part of the department of government charged with the enforcement of the labor laws, with the object, not only of furnishing information to the legislature and to the people, but also of furnishing conclusions or findings of fact which shall be *prima facie* evidence of the truth, or even conclusive and binding upon the court. This object is sought

to be obtained through the powers granted to the modern department of labor.[1]

(1) *Administrative Investigations*

One reason for the breakdown of administration is the failure to provide for that executive discretion which is as inevitable and necessary as legislative discretion. The American theory of separation of branches of government assigns to the legislature the investigation of conditions upon which its policy or principle is adopted and enacted into statute law. With the growing complexity of conditions the legislature has been compelled to go into the investigation of minute details, legislation on which, if applied to every establishment would be unenforceable. Consequently, the old-type factory inspectors or special police are compelled to decide upon their own executive investigations whether or not they will enforce these details.

The situation is similar to the history of railroad regulation. In the early "Granger laws" of forty years ago it was attempted to enact a detailed actual schedule of each rate for every shipment on every road, and then it was left to the individual shipper to bring suit in the courts to enforce the schedule. The later legislatures of the past twenty years have omitted these technical details and have contented themselves with laying down general rules such as that all rates and services shall be reasonable as between the roads and the shippers. They have then created railroad, or public utility commissions, whose powers, in the light of the constitution, are not legislative, executive, nor judicial, but *investigational.*

The problem which the legislature sets to these commissions for investigation is that of reasonable rates and services in each particular case where the question arises. The *principles* which enter into reasonableness are being continually laid down by the courts in long lines of decisions. Consequently, the commission needs no power of discretion. It must follow the

[1] To what extent this object can be accomplished constitutionally is not here discussed. The court is itself both an investigating body and independent of the legislature. It can evidently refuse to be bound by a creature of the legislature. At the same time the ingenuity of bill-drafters has worked out methods of procedure which go far toward accomplishing the object. These are considered below.

law—that is, the principles. It only investigates and ascertains the *facts* which those principles call for. The legislature meanwhile has enacted that, *when* these facts are ascertained and published, *then* the law shall go into effect. The *fact* is the rate or service which has been ascertained by the investigations of the commission to be reasonable. It is announced and published as a finding of fact, a "rule," or "regulation," or "order," not a statute, but having the force of a statute. This is the finding or conclusion of the commission's investigations. It is *prima facie* valid in court and cannot be overthrown except by overwhelming evidence to the contrary.

Labor legislation has now reached an even more voluminous and technical stage than that which applies to railroad regulation. The legislature cannot possibly consider all the facts and details. Yet the legislature alone should determine the policies and the standards, and should go only into such details as have general application. The modern department of labor corresponds to the public utility or railroad commission. The latter passes upon the opposing interests of corporations and consumers or shippers, epitomized in the price bargain. The former passes upon the interests of employer and employee, epitomized in the wage bargain. The modern department of labor investigates the facts and works out the details which the legislature cannot pass upon.

Various states have begun experiments in this direction. The problem is much more diversified than that of establishing reasonable rates and services. "Reasonableness" in railroad regulation has a comparatively definite meaning; but reasonableness in labor legislation is as complicated as human life and modern industry. A reasonable standard in one field has no meaning in another. There are health, safety, and welfare, for example, which require a variety of standards. There are hours of labor, days and periods of rest, age and sex of workers, with varying standards. There are private employment offices, workmen's compensation for accidents, and many other matters.

An Ohio statute of 1913, following the example of Wisconsin, merely requires that: "Every employer shall furnish employment which shall be safe for the employees therein; and shall furnish a place of employment which shall be safe for the

employees therein and for frequenters thereof; and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes, follow and obey orders and prescribe hours of labor reasonably adequate to render such employment and places of employment safe; and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters." The law then gives to a commission the authority to ascertain and "fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards, and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety, and welfare of employees in employments and places of employment or frequenters of places of employment."[1] The orders of the commission go into effect thirty days after publication and are *prima facie* reasonable and lawful. By means of this procedure the laws may be adapted to every detail of modern industry. They can be changed at any time when a further investigation shows new dangers or new methods of prevention. The commission is continually in session, but a legislature meets only at stated times. The commission is continually investigating while it is enforcing the laws, but the legislature investigates only when lobbyists, petitioners, or members succeed in getting a hearing. Other states which have adopted a similar method are California, Colorado, Massachusetts, New York, Oregon, Pennsylvania, and Wisconsin.

The above illustration particularly pertains to safety regulations, but the same principle has been developed with reference to other phases of labor legislation.[2]

For compensation in case of accident the legislative standard may require "reasonable" medical and surgical care, 65 per cent of the average weekly earnings lost during disability, and so on, to be determined and awarded by the commission.

For private employment offices the legislative standard may prohibit misleading statements, discriminatory fees, and the

[1] Ohio, General Code, 1921, Sec. 871-15, and Sec. 871-22 (4).

[2] The illustrations following are taken from the laws of Wisconsin, but are more or less typical of laws in other states.

like, and then give the commission power to "fix and order such reasonable rules of conduct of the business of any employment agent as may be necessary adequately to carry out" the sections of the law.

For the wages of minors the legislature may require employers to pay a "living wage," or such compensation "whether by time, piecework, or otherwise," as shall be "sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare." The commission, then, must carry on extensive investigations, must make various classifications, and determine for each the amount of the wage that the legislature intended.

In the case of adult women the legislature may provide that no woman shall be paid less than "reasonable and adequate compensation for the services rendered" and require the commission to ascertain whether the remuneration in a given instance is reasonable and adequate.[1]

For the hours of labor for women the legislature may prohibit the employment of any female "for such a period or periods of time during any day, night, or week, as shall be dangerous or prejudicial to the life, health, safety, or welfare of such female," and then authorize the commission to "investigate, ascertain, determine, and fix such reasonable classification" and such periods of time as shall carry out the purposes of the law.

For dangerous employments the legislature may provide that "no employer shall employ, require, permit, or suffer any minor or any female to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health, safety, or welfare of such minor or female," and then authorize the commission to investigate, classify, and determine the specific occupations from which women and minors shall be excluded.

For the regulation of apprenticeship the legislature may require an indenture stipulating the hours for work, the hours for

[1]Prior to 1925 the minimum-wage law applied to adult women as well as minors. The commission, however, was enjoined from enforcing the law because of the decision in the Adkins case, 261 U. S. 525. The legislature then repealed the sections making it applicable to adult women, and substituted the so-called "oppressive-wage" law, from which these quotations are taken. See C. 176 Wisconsin Session Laws, 1925.

attendance at school, the compensation, etc., and authorize the commission to draft, approve, and enforce the same.

For industrial and vocational education, the legislature may require employers to permit children to attend continuation schools a certain number of hours each week in the daytime, without deduction of pay, and then authorize the commission to issue and revoke permits to work based on investigations showing what is necessary to secure compliance with the law.

The foregoing illustrations show the distinction between a legislative policy which sets up a standard, and an administrative investigation which applies the standard to each case or each class of cases. The principles of standardization have two aspects, which may be designated as *diversity* and *generality*. There is a wide diversity of standards, simply because there is a wide diversity in the subject-matter of legislation, all the way from safety and health to wages and education. Diversity requires specialization on the part of investigators, and consequently the staff of a labor department requires physicians and hygienists for some of the standards, accountants and actuaries for others, engineers and mechanics, economists and statisticians, business men and workingmen, according to the peculiarities of each subject and the special or general knowledge required.

Much more difficult and debatable is the question of generality of the standards. The most general standard is "reasonableness." Reasonableness, in law, means simply that *all of the facts* must be investigated and *due weight* must be given to each. If the legislature merely required that wages or hours should be "reasonable," then the labor department would have almost as wide discretion as the legislature itself. If, at the other extreme, the legislature prescribes minute details, then the investigations are reduced to those executive investigations already described as the means of securing evidence of violations for prosecution. Between these two extremes of generality and particularization there is room for wide differences of opinion and policy. In some subjects the legislative standards must necessarily be much more general than in others. A "living wage" can scarcely be ascertained as precisely as the age of a child. The number of hours of continuous work that are injurious to the health of women cannot be as accurately deter-

mined as the dangerous character of a set screw or a circular saw. Only this is to be noticed: if the legislature goes too far in specifying details of each standard, it forces widely different factories, shops, ages, conditions, into the same mold, and assumes to have an intricate knowledge of conditions and a foresight of changing conditions which its brief and crowded sessions do not permit. Consequently, the law is unenforceable. On the other hand, the labor department is continuously in session. It is not hurried. It can adopt a general rule or can go into the details as far as it has information. It has its staff of investigators and inspectors who are continually furnishing new information, and it can change its rules as needed. It has its representatives of employers and employees who testify to the actual conditions that need remedying and the actual workings of the rules already adopted. It can make classifications and issue different rules for different conditions, and can change its rules when the conditions change or when it discovers new and more effective remedies.

The principal value and importance of administrative investigations is their conclusiveness. No matter how indefinite or general is the legislative standard, it must be reduced to a definite rule upon which prosecutions and penalties can be based. A decision must be reached and enforced. We have seen that the investigations of private associations, of experts, of attorneys on either side of a case, or even of legislative committees and temporary commissions, are not conclusive. If the court accepts these investigations it does so as facts of "common knowledge" of which the judge takes "judicial notice" without proof; and, in so doing, every reasonable doubt is resolved against them and in favor of the alleged violator. To be conclusive, an investigation must be clinched by proof, and the procedure by which this is accomplished is prescribed by the courts in their decisions on due process of law. An administrative investigation must usually follow this procedure: First, the inspectors and investigators assemble their facts. Tentative conclusions are drafted and notice given of a public hearing for all persons whose interests will be affected by the rule. Opportunity to be heard is essential to due process of law. After the public hearing the rules are drafted in final form, and, when they are officially published, they go into effect

on such date as the legislature has previously designated. Even with this procedure, the rules and orders are not legally conclusive and binding on the court. If an employer violates them and then attacks them in court, he does so on the ground that they are unreasonable in some respect, such as class legislation or discrimination, instead of reasonable classification. If they are unreasonable, then they are unconstitutional. The court may decide to reinvestigate the facts on its own account. It is an independent branch of government and cannot be deprived of its powers by the legislature; but the legislature may prescribe the court's procedure and may give to the rules of the labor department, when based on full investigation, a preferential position as proof. It makes them *prima facie* lawful, valid, and reasonable, so that the burden of proof is on the employer to prove affirmatively that they are unreasonable. It may require the court to send the case back to the labor department for reinvestigation if the employer attempts to bring to the court any evidence that he had withheld from the department. The department may then, if it so decides, change its orders to cover the omitted facts. In these and various other ways suggested by the ingenuity of bill-drafters, the investigations, findings, and orders of administrative bodies are given, not actually binding and conclusive weight on the courts, but such a high degree of conclusiveness that for ordinary, practical purposes they are final.[1]

In this respect, administrative investigations are a necessary aid to the court and serve to place in evidence the industrial facts which otherwise would not receive due weight. The court is intrusted with the final authority to apply the principles of justice and the constitution to the acts of legislatures and administrative bodies. It decides whether or not the act accomplishes a public purpose and affords equal protection of the laws. These are questions of fact in each particular case. A question of fact resolves itself into a question of classification. Does the particular act apply to some people and not to others who are similar? Or does it enforce the same arbitrary

[1] For different methods of securing different degrees of conclusiveness, consult the minimum wage laws of various states, the laws already referred to, and the laws creating state public utility commissions, the Interstate Commerce Commission and the Federal Trade Commission.

See also "Penalties and Prosecutions," p. 535.

rule on a variety of persons who are not really similar? If so, it is discriminatory and unequal in that it is based on a false classification. Does the act benefit a class of people who do not need the aid of the police power and whose private benefit is not a public benefit? Does the act impose burdens on some that are so far in excess of the benefits to others that they are unreasonable?[1] These are some of the questions of classification asked by the courts, and, evidently, they require accurate investigation and well-established facts in order to avoid the charge of false classification. Speaking of the need of administrative investigations that shall approach the standard of conclusiveness in establishing the facts for classification, Professor Ernst Freund has recently said:[2]

The equal protection clause of the fourteenth amendment will, of course, be thought of at once as a possible weapon of defense against unwarranted class legislation. However, a study of the operation of this clause in the past must produce considerable skepticism as to its availability in the future. There are some states in which it plays a considerable part in the judicial overthrow of statutes, and Illinois is conspicuous in this respect. In that state, however, the application of the rule of non-discrimination has been so capricious that the impossibility of foretelling what kind of classification for purposes of welfare legislation will stand the test of judicial scrutiny has become a notorious grievance. The Supreme Court of the United States, on the other hand, having applied the rule in one case (that of the antitrust act of Illinois, Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540, 46 L. ed. 679, 22 Sup. Ct. 431) with surprising strictness, has since practically taken the position that a legislative classification will be sustained if there is any reasonable possibility of its justification, and in the last ten years no measure has been declared invalid by reason of undue partiality or discrimination. No jurisdiction has developed any constructive theory of classification which might serve for guidance or protection.

The reason for this failure is tolerably clear. The legitimacy or

[1] In upholding the law prohibiting night work for women, the New York court said: "The only chance for debate would be whether the prohibition is so wide and so universal that it can be said it is so out of proportion to the benefits sought that it is burdensome and unreasonable to a degree which transcends the discretion of the legislature." People *v.* Charles Schweinler Press, 214 N .Y. 395, 108 N. E. 639 (1915).

[2] "Problems of the Police Power," *Case and Comment,* Vol. XX, 1913, p. 303.

illegitimacy of classification can be established only on the basis of social or economic data of great complexity. It presents a question of fact for the examination of which the courts are not equipped. It is always a condition as well as a theory which underlies public welfare legislation; and while the courts can deal adequately with the theory, the condition must elude them unless it is notorious, and at present the causes of social or economic grievances are rarely notorious.

Conceivably this defect of judicial action might be overcome by new powers or facilities for independent inquiry placed at the disposal of the courts; but it is not likely that these will be resorted to if experience shows that the same function can be better performed by other organs. And the remedy appears to be coming from another direction. In an increasing number of cases important legislation is being prepared by commissions of inquiry composed of experts and having adequate resources for investigation at their command. The conclusions of such a commission will carry weight which unfortunately has long ceased to attach to the mere fact of the enactment of a statute. The courts may of course still reject an act thus recommended; but the case of the workmen's compensation law of New York shows not merely with what unfeigned respect the work of such a commission will be commented on by a court, but also that public opinion will not be inclined to treat a decision adverse to its conclusions as final. A proper development of scientific methods of legislation will reduce the conflict between legislation and adjudication to a minimum.

A similar result may be expected from the growing legislative practice of delegating in appropriate cases powers of quasi-legislative or quasi-judicial determination to administrative commissions. It is now generally conceded that no other form of railroad control is adequate or satisfactory, and the superseding of the Massachusetts advisory railroad commission—for many years the model of its type—by the mandatory commission act of the present year, marks the final victory of this phase of railroad legislation. Again, the establishment of an industrial board in New York, likewise in the present year, and in pursuance of the recommendations of a notable commission, marks the adhesion of the leading state of the union to a similar method of labor legislation, first introduced in Wisconsin. And it is noteworthy that of the minimum wage laws enacted during the year only one does not pursue the commission plan.

In proper hands and under proper safeguards the system of leaving to an administrative commission the development of principles laid down by the legislature in broad terms carries with it guaranties of

reasonableness and impartiality which a political body can never afford. The system is based upon the theory that when once an agreement has been reached regarding the principle of a measure, the development of that principle into detailed rules is a process determined by the logic of ascertained facts. It thus represents a separation of that which is matter of choice, or expediency, *viz.*, the adoption of a policy, from that which is matter of argument and judgment; namely, the application of the policy to particular circumstances. Viewed in this light the delegation constitutes not a violation, but a more perfect development of the principle of the separation of powers, and this should be borne in mind when the system is attacked as an unconstitutional delegation of the legislative power.[1] In any event some such method of dealing with complex social and economic problems seems an almost indispensable corrective of the possible abuse of a police power extending to every interest that can be reached or affected by governmental action.

(2) *Representation of Interests*

From what precedes, it will be seen that the highest place in the American scheme of constitutional government is that occupied by investigation. But the investigations required are not merely those of experts, as seems often to be assumed when the term "scientific" legislation is used. The investigations of experts, such as physicians, engineers, economists, statisticians, and lawyers, are likely to end in conclusions that may be ideally perfect from a technical point of view, but not *reasonable* from the constitutional point of view. They do not include *all* of the facts. The latter can be ascertained only through adding the experience and testimony of employers and employees—those who are daily in contact with the facts, and whose common knowledge corrects the narrow knowledge of specialists. The public hearings required by due process of law are the legal and constituted devices contrived to make sure that all sides will be heard. These public hearings are formal, disputatious, indiscriminate, and indecisive. They do not offer the common

[1] The laws which were invalidated by the decisions cited in "One Day of Rest in Seven," p. 299, and "Lighting, Heating, and Ventilation," p. 401, were not of this class. They made no provision for investigation and ascertaining of facts, but merely stated that certain action might be taken by the commissioner of labor "in his discretion" or if "it appears" to him that certain results could be obtained.

man an equal opportunity with the lawyer or expert to get his common experience written into the conclusions. The commission is not bound in any direct way by what was offered at the public hearing. The latter becomes a formality and a mere technical compliance with the constitutional requirement of "due process." The officials withdraw and formulate their own rules as they please.

This is the essence of bureaucracy. It is often charged that the efficient methods of administration employed in leading European countries are not adapted to American democracy because they are "bureaucratic"; but American officials, as a rule, are as bureaucratic as those of Europe. It is not rotation in office that cures bureaucracy. The most democratic of Americans often become bureaucrats as soon as installed in office. Bureaucracy is just the ordinary human instinct for exclusive possession of power. Its essence consists in imposing its will upon others without really consulting them. Whether the office-holder is an expert, a democrat, or a politician, makes little difference. It seems easier to reach a decision in one's mind and then to force others to obey than to submit to the criticism or to profit by the advice of those who are not officials.

The situation is different in a legislature where each member is compelled to listen to his opponents as well as his partisans, and to modify his individual opinion in order to get a majority opinion. A similar arrangement is called for in the administration of labor law. Here the conflict of interest is often more intense than it is in a legislature, rising at times to the pitch of incipient civil war. It is not surprising, therefore, that, in many states and countries, the officials who administer labor law are required to submit their investigations and proposals, before action, to the representatives of employers and employees. These representatives owe allegiance, not to the government officials, but to the interests which select them. Wherever these interests are organized into employers' associations and trade unions, there the representatives may be elected or designated and recalled in some way by the organizations. In American states the substitution of administrative rules for legislative details makes it possible to adopt representation of interests. If the legislature lays down the general rule that every place of employment shall be made "safe" it naturally follows that those

who can best pass upon the safety devices and processes, as to whether they are *practical,* in addition to being *scientific,* are the employers and employees who must install and use them. In the states which have adopted the principle of administrative investigations these joint committees actually draw up the rules for safety and health, assisted by the staff of the commission and the various classes of experts who may be called in.

In New York, for example, there is a Division of Codes, to which is left the preparation of rules and regulations for the conduct of industry, supplementing and amplifying the provisions of the law itself. When a new set of rules or amendments to existing ones is to be undertaken, the Industrial Commissioner appoints a committee of experienced persons who are acquainted with the particular industry or problem under consideration, including representatives from both employer and employees, who serve voluntarily and without compensation. One of the Industrial Code referees acts as chairman, and technical experts of the Engineering Division and Bureau of Industrial Hygience act as advisors. The committee holds meetings as a whole. In addition there are many subcommittee meetings and conferences with individual members and inspections of factories for the purpose of working out in a practical manner subjects on which the committee could not otherwise agree, and for the purpose of getting first hand knowledge of conditions in and about a particular industry under consideration. After the proposed rules are drawn up there is a public hearing where suggestions and objections are heard. The committee then reconsiders the proposed rules, and makes such modifications as are considered necessary in the light of such suggestions and objections. A report is then submitted to the Industrial Commission, for action by the Industrial Board.[1]

Thus there are two kinds of publicity, the public hearing usually required by the formalities of due process of law, and the *representative publicity* participated in by the chosen agents of the interests. The latter is the more effective, because it is carried on with experiments and tests, over a period of time, by those whose personal interests and knowledge are keen. It

[1] *Annual Report,* Industrial Commissioner, New York, 1925, pp. 132-136.

is a process of cooperative investigation. When an investigation of this kind is completed it fulfils all the constitutional requirements of "reasonableness." It includes all of the facts, because it is conducted by those whose interests are opposite on some points and common in others. It gives "due weight" to the interests of employer and employee, and thus conforms to the "equal protection of the laws." Furthermore, a rule thus agreed upon has the backing of the representative employers of the state, and their approval carries such weight in court that other employers, who would ordinarily violate the laws enacted by a legislature, do not violate the administrative rules approved in joint conference.

What is true of safety is also true in a greater or less degree of all branches of labor legislation where administrative rules can be substituted for legislative statutes. As we have seen, this is possible in minimum wage laws, hours of labor, excluded employments, public and private employment offices, and workmen's compensation. In some of these branches the opposition of interests is less reconcilable than it is in others, and there the commission itself must exercise greater authority. For the representative committees are, after all, only advisory. They have no legal power, no veto, on the commission. The rules and orders that carry penalties are the commission's rules and orders, and not those of the representatives. But, while the committees are advisory, the legislature may make it mandatory upon the commission to consult them. The industrial commission law of New York, enacted in 1915, has taken this further step in the recognition of representatives. It requires the commission to submit its proposals and investigations to an "industrial council" of representative employers and employees, for their advice.[1]

The economic principle underlying this representation of interests is the well-known fact that competition tends to drag down all employers to the level of the worst. Labor legislation is designed to bring the worst employers up to the level of the best; yet it cannot be expected that legislation will ever be able fully to accomplish this. Individuals here, as elsewhere, always

[1] Although the industrial commission has been superseded by the industrial commissioner, with an Industrial Board, provision for such an advisory council still remains.

will be ahead of what the state can do. With each rise in the level of standards required by the legislature, individual employers will be free to rise still higher. Here is exactly where the field of administration lies. A labor department, with representation of interests, can do what the legislature cannot do. If it is given leeway in drafting rules and regulations, it can call upon the more advanced employers and the representatives of labor to assist in setting higher standards, and it can then enforce these standards on the more backward ones. It can bring out the divisions that already exist among employers, and, instead of permitting the worst to set the standards for the best, it can assist the best in setting standards for the worst. The legislative method treats all employers alike as criminals, and forces all to combine and to support the same lobbyists, in order to resist what they consider destructive laws. The administrative method permits the leading representatives of employers to consult with the representatives of labor and with the officials who represent the state, regarding all of the details necessary to carry the law into effect and to adjust it to all conditions. The method is practically that of the voluntary joint conference of collective bargaining in which a trade agreement between an employers' association and a union is drawn up. Neither the union, the employer, nor the politician dominates. The decisions are not hastily adopted by a majority vote, but are given sufficient consideration, accompanied by thorough investigation and complete publicity. The process is educational and cooperative, rather than argumentative and coercive. It is not the struggle of two lobbies to win over a committee or a legislature, but it is a substitute for the lobbies, sitting in continuous conference, under state supervision, working out the rules and regulations which give effect to the legislature's standards of industrial welfare.

This representation of organized interests in the administration of law is peculiarly fitted to bridge the gaps caused by our constitutional separation of the branches of government. In other parliamentary countries the heads of executive departments, such as cabinet officers and ministers of labor, are also members of the legislature. Any member of the legislature, or the opposition parties in the legislature, can call them to account on the floor of the house and before the audience

of the people, for their methods of administration. A hostile vote can dismiss them from office. Thus their acts are scrutinized and their responsiblity is enforced.

In the American system the "minister of labor" is the "commissioner of labor," the "state factory inspector," or the "Secretary of Labor." In theory he is responsible, but in practice the machinery is lacking to enforce responsibility.[1] Those who are most concerned in holding him responsible are not "the public" at large, but the employers and employees who must obey the laws which he enforces. At the same time they have no voice, no *representation,* that is theirs as a matter of right and law. They can only exert themselves through the devious ways of "politics" and lobbyists.

For this reason, in American states and the federal government, it has been necessary to create "commissions," where in foreign countries the same duties would be entrusted to political departments. The Interstate Commerce Commission, the Federal Trade Commission, the Federal Reserve Board, the public utility commissions of the states are fourth branches of government, separated from the other branches and performing duties which in other countries are under a cabinet officer, such as the chancellor of the exchequer, or the minister of commerce and industry, who has a seat in parliament. A leading object in all of these American cases is to take the question "out of politics"—that is, out of the partisan contests that go on in the legislature. This would probably not be necessary if the chief executive officer having them in charge were a member of the legislature, as in parliamentary countries, liable to be dismissed if he and his colleagues fail to get a majority vote in the legislature.

The situation is even more serious in dealing with labor legislation. Here, the conflict of classes is more menacing to peace than it is in matters of railroads, trusts, and banks. The labor question, of course, cannot and should not be taken out of the legislature. It is always a question of politics—that is, of public policy—as to what shall be the standards and what laws

[1] An interesting adaptation of the European system is found in the Wisconsin statutes which provide that the legislature may interpellate appointive officers, and remove them from office, after being examined. Secs. 13.23, 13.24 and 13.245, Wisconsin Statutes.

shall be enacted. But the modern department of labor takes out of the legislature the intricate details of investigation, after the standards have been enacted into law, and most important of all, it permits the creation of an inferior industrial legislature, composed of the real representatives and leaders of both interests, continually in session under state supervision, and working upon those details of administration which, after all, are the actual substance of such legislation as is enforced.

Of course, various problems arise in the constitution of these representative councils. One is the representation of unorganized workers. As yet, no device has been discovered by which they can be directly represented. It may be said, perhaps, that they are partly represented by employers who need them to offset the unions, partly by the unions, many of whose demands would benefit both organized and unorganized labor, and partly by the administrative body which represents the public.

In all cases it is found by experience that the representatives on either side should not be lawyers. The object is not to win a case in court, but to reach an agreement by conference. Neither should the employers' representatives come from the financial or commercial side of the business. They should be the men in charge of production, who have grown up in the industry and know the labor conditions. The amount of time required is not so great as to prevent attendance. The investigations are made by a staff continuously employed and are then laid before the representatives, and their familiarity with the business enables them immediately to pick out the weak spots. These are referred back for further investigation, so that the various brief meetings of the representative council are enough to accomplish the purpose. Such investigations are not hastily made, as they are in the cases of legislatures in session. The conferences are not required to act within a limited time, and if they cannot cover the whole ground they cover a part of it and wait for future investigations to make the necessary amendments. The representatives do not need to be officials with governmental powers to enter factories, but they must have a staff in which they have confidence. This is the problem of civil service to be discussed later.

(3) *Types of Labor Departments*

The earliest and most universal development of the new class of commissions has occurred in the field of workmen's compensation. More than thirty states have a workmen's compensation act administered by a commission, which determines, under the rules laid down by the legislature, just how much the loss of wages is due to an industrial accident for which the employer shall make compensation. Usually, these compensation commissions have been created in addition to the existing bureaus or officials enforcing labor laws. The existing departments continue to follow their old line of executive procedure, and consequently there is often an overlapping and uncorrelated administration of the various laws. On July 1, 1925, there were twenty-eight states[1] that had two or more independent agencies dealing with labor laws. In some of these states an attempt has been made to bring about a coordination of functions, by making the executive official an ex-officio member of the new board. In California in 1921 the four bureaus were designated divisions of the newly created department of labor and industrial relations. A member of one of the bureaus was elected commissioner, and monthly meetings of division representatives are held. These representatives have the power to transfer functions and funds. The chart on page 531 showing the administration of labor laws in Oregon is presented purely as an illustration of decentralized administration. It is not intended to be a criticism of the quality of administration.

There is a well-defined tendency toward centralization, the idea of economy and fixation of responsibility making a strong appeal to legislatures. This centralization process has proceeded along two distinct lines. In six states[2] a commission, usually consisting of three members, is created to take over all functions—the executive, as well as the quasi-legislative and quasi-judicial functions already described. Sometimes the in-

[1] Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Missouri, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Vermont, Virginia, West Virginia, Wyoming.

[2] Idaho, Kansas, Michigan, Minnesota, Utah, Wisconsin.

dividual members of these commissions are appointed as directly representative of employers, workers, or the public, as the case may be. When the members are not representative, representation of interests is obtained through the appointment of advisory committees.

In eight states[1] the centralization has occurred through the creation of a department of labor, headed by one person, variously designated as director, secretary, or commissioner. The Pennsylvania department of labor and industry, the organization of which is shown on page 530, is a good example of this form. It should be observed that within the department there is usually a board of three or five members to hear appeals in compensation cases and to adopt the rules under the general legislative standard. In Pennsylvania, there are two such boards, one to consider appeals in compensation cases only, and one for the approval of rules and consideration of appeals on the application of such rules and labor laws other than the compensation law. Usually, the commissioner of labor is ex officio a member of such a board, but in New York he is not. Apparently, it was the intention of the New York legislature to divorce entirely the executive and judicial functions, for the reason that when the functions are combined the accusation is sometimes made that the same official or board is prosecutor, judge, jury and executioner.

The exact structure or form of organization of the labor department is not so important as observance of the principles which are discussed in this chapter. It is of course necessary to eliminate overlapping of functions and to correlate the work of the various officials and bureaus charged with the administration of the labor laws, but unless there is scientific investigation of facts, representation of interests, and a trained personnel, there cannot be efficient administration.

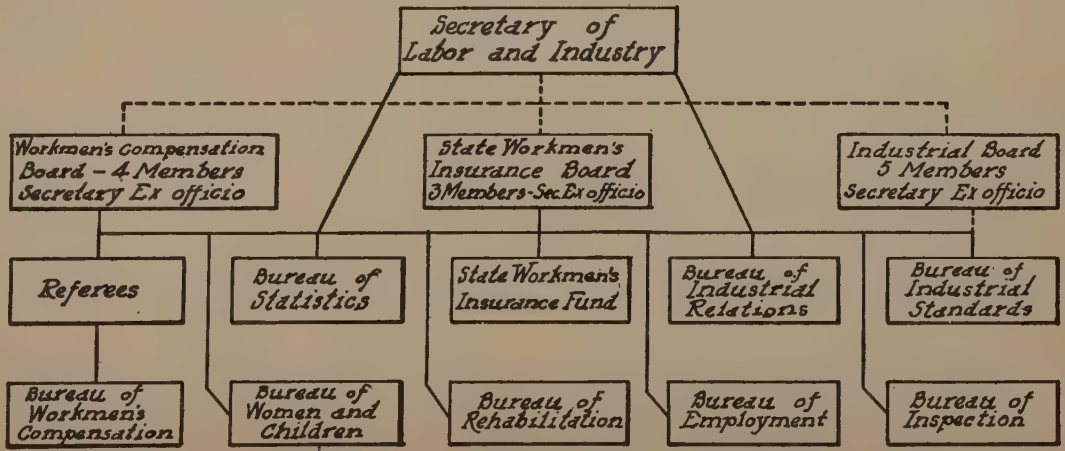
(4) *Civil Service*

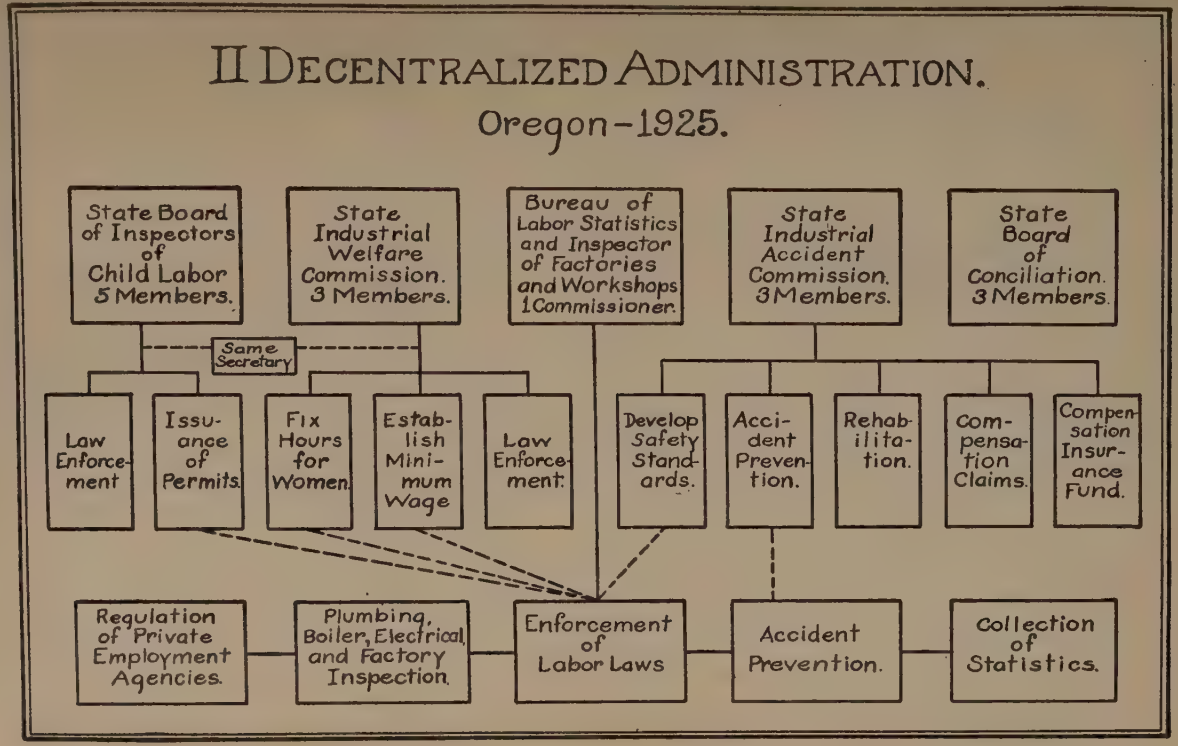
We have already seen how the administration of labor laws has required the building up of a special police. This was an advance over the enforcement of law by general officers, but

[1] Illinois, Nebraska, New Jersey, New York, Ohio, Pennsylvania, South Dakota, Washington.

1. CENTRALIZED ADMINISTRATION

Department of Labor and Industry
Commonwealth of Pennsylvania - 1925


Secretary of Labor and Industry
Workmen's Compensation Board - 4 Members Secretary Ex officio
State Workmen's Insurance Board 3 Members - Sec. Ex officio
Industrial Board 5 Members Secretary Ex officio
Referees
Bureau of Statistics
State Workmen's Insurance Fund
Bureau of Industrial Relations
Bureau of Industrial Standards
Bureau of Workmen's Compensation
Bureau of Women and Children
Bureau of Rehabilitation
Bureau of Employment
Bureau of Inspection


II DECENTRALIZED ADMINISTRATION.
Oregon–1925.
State Board of Inspectors of Child Labor 5 Members.
State Industrial Welfare Commission. 3 Members.
Bureau of Labor Statistics and Inspector of Factories and Workshops 1 Commissioner.
State Industrial Accident Commission. 3 Members.
State Board of Conciliation. 3 Members.
Same Secretary
Law Enforcement
Issuance of Permits.
Fix Hours for Women.
Establish Minimum Wage
Law Enforcement.
Develop Safety Standards.
Accident Prevention.
Rehabilitation.
Compensation Claims.
Compensation Insurance Fund.
Regulation of Private Employment Agencies.
Plumbing, Boiler, Electrical and Factory Inspection.
Enforcement of Labor Laws
Accident Prevention.
Collection of Statistics.

it brought many difficulties. It created salaried positions, which political parties seized upon for political purposes, and a mere ostensible enforcement of the law. Even more serious than party politics was the struggle of employers and employees to get control of these offices. The trade unions claimed the right of appointment, because largely through their efforts the positions had been created, and because they considered that the laws would not be enforced except by friendly inspectors. The result has been that, in many states, the unions themselves have been split by internal politics over the personal candidacies of their members for the positions. The unions also have been compelled to make alliances or compromises with the political parties, and thus has resulted the "labor politician"—selected, not to enforce the law effectively, but to get the "labor vote." On the other hand, the employers also make their political alliances, and then the selection of factory inspectors is often designedly made to prevent the enforcement of the laws. Thus, both political and industrial partisanship have joined, either to defeat altogether the factory laws through hostile inspectors, or to make them ineffective through political trade union inspectors.

The next step is the effort, made in a few states and by the federal government, to adopt civil service examinations, tenure of office on good behavior, and promotion in the service, as a substitute for political appointments. These civil service laws, beginning in the decade of the 'eighties, were designed primarily to prevent the use of public offices as a part of the political "machine." Indirectly, they have secured greater efficiency, in so far as they have been able to prevent officials from being changed at each change in the elections, but it has required several years for the more experienced civil service commissions to reach the point where they could learn to conduct examinations directly for efficiency and for the peculiar fitness of the applicant for the particular position. Industrial antagonism must be recognized, just as political antagonism has been recognized and provided against. Factory inspectors, who do not have the confidence of both employers and employees, either as to their practical knowledge or their impartiality, are as inefficient for their positions as those who are avowed politicians. Just as civil service reform is designed

to secure officials who are non-partisan as respects political antagonism, so it should secure factory inspectors who are impartial as respects industrial antagonism. It is in the legislatures and Congress that organized labor and organized capital should fight out their legal battles. There it is proper that each side should have its lobbies and its recognized leaders, and should carry its fight "to a finish." It is there that public policy is determined and that opinions, partisanship, and prejudice have full play in working out that legislative discretion which constitutes public policy. When the law is once enacted the battle should cease, and the officials selected to enforce the law should enforce it efficiently, exactly as it stands, in harmony with its policy and yet impartially as between the two interests. This is the present problem of "civil service reform" as respects labor legislation. Labor law cannot be enforced if either employers or trade unionists distrust the officials, on account of their incompetency, their politics, or their partiality. Even in states having civil service commissions this distrust sometimes exists. This is partly due to the bureaucratic exclusiveness of the administrative bodies themselves. An essential thing in their method of administration is that they should admit the recognized leaders of employers and unions to a share in conducting the examinations. This is partly provided for in the department of labor law of New York, which makes the advisory council of employers and employees the assistants to the civil service commission for the examination of applicants. It is provided for in the free employment offices of Wisconsin and of Denmark, where the employment officials are selected by the joint committees of employers and employees.

It has been implied above that the inspectors of the modern department of labor become investigators as well as police. They cooperate with the employers and workmen in drafting the rules. Their work consists more of instructing employers and workmen in the devices and processes of safety, sanitation, and welfare than in mere prosecutions; but they can occupy this enviable position only to the extent that they are skilful, efficient, and impartial. "Politics" is fatal. As soon as organized employers and employees have become accustomed to cooperate in the administration, they tend to exclude the poli-

tician, because he drives capital and labor apart instead of bringing them together.

(5) *Bill Drafting*

The history of labor legislation is the history of an art as highly technical and expert as that of engineering science or that of an inventor in electricity or chemistry. Like other arts, it is a history of trial, experiment, failure, until something workable is produced. In early days an inventor might be merely an ingenious mechanic, now he is frequently a scientist, with a staff of assistants, supported and financed by large expenditures of money. Great private corporations keep ahead of competition by means of their laboratories, scientists, investigators, inventors. When the government takes up invention, as it has been done in agriculture, it supports costly experiment stations and sets scientists and inventors to work.

Yet, in the equally technical field of legislation, the drafting of bills remains largely in the stage of the mechanic. There are two very distinct divisions in the process of legislation. One is the discussion of policy, the other the framing of bills that give effect to policy. The former is the division belonging to the legislature, drawn from the ranks of the people. The latter is the technical work of experts. In a private corporation the line of demarcation corresponds to that between the board of directors and the engineers, architects, or lawyers. In lawmaking it corresponds to that between the legislature and an administrative commission. The latter is conducting experiments in a great laboratory. The enforcement of law is, in fact, a series of experiments and tests upon the actual workings of the law. The commission's investigations reveal the gaps and defects. When the legislature meets, these tests and investigations furnish the technical information for amendments. The commission, indeed, when it drafts its own rules and orders, is doing the same kind of technical work as when it assists the legislature in drafting its bills.

But administrative commissions are like the courts in that they follow precedents, and are conservative in that they do not willingly take up new things. Their administrative problems are sufficiently great, so that they will not of their own volition

initiate and push new lines of public policy. Their work is the perfection and elaboration of policies already adopted.

The business of pioneering new lines of labor policy belongs to the legislature and to private associations, or to a legislative reference bureau; but when there is sufficient public opinion, and a legislative demand for these new lines of legislation, then administrative investigation is superior to any that has been devised for ascertaining the facts and preparing machinery for administration. It follows that private societies, such as labor unions, associations for labor legislation, child labor committees, and consumers' leagues are needed not only to watch the existing administrative machinery, but to pioneer on new lines of legislation. The functions of such private associations are now even greater than they have been before. They criticize where needed and assist where practicable.

(6) *Penalties and Prosecutions*

Behind all laws and administrative rules having the force of law lies the penalty for violation. No matter how efficient the administration or how actively employers and employees may assist, the administration would remain but a voluntary cooperative society if not supported by penalties imposed on those who refuse or neglect to assist.

Yet, too much reliance is generally placed on penalties and punishment. Officials sometimes point to their record of numerous prosecutions as evidence of their efficiency in office. Such a record may prove exactly the opposite. Penalties should be looked upon as only a *potential* power, whose strongest evidence of *actual* power is sometimes found in the least necessity of resorting to them. A record of a small number of prompt and impressive convictions may mean more for the enforcement of law than several pages of statistics of prosecutions. At the other extreme, many factory inspectors who in American states furnish little or no evidence of any prosecutions are probably not enforcing the laws.[1] No subject of

[1] The *Report on Condition of Woman and Child Wage-earners in the United States*, Vol. XIX, 1912 (Sixty-first Congress, Second Session, Senate Doc. No. 645), pp. 23-88, gives results of the most extensive effort yet made to investigate the subject of prosecutions. See also *American*

labor legislation is more uncertain and unsatisfactory than this of penalties and prosecutions.

The difficulty sometimes experienced in securing convictions is shown by a statement of the commissioner of labor in New York in 1908.[1] In thirty-two cases of illegal employment and overtime work of women and children tried before juries in a period of three months not a single conviction was obtained, although it was shown in one instance that a woman worked seventeen hours in one day and in another that a child was only seven years old. The inspector's report for 1907 showed that in one-half of the 294 cases where conviction was secured, the court remitted the fine, and in most of the other cases only the minimum fine was imposed, averaging about $26 a case.[2] Other states show a similar leniency.

To-day the situation is not much changed in New York so far as leniency of the courts is concerned; but improvement in the laws themselves, the development of administrative codes, and better methods of enforcement have brought more effective compliance with the laws without resort to prosecution. Therefore, the methods used in New York which have reduced prosecutions to a minimum are set forth in detail. The statistics quoted all refer to the fiscal year ended June 30, 1925. After an inspection has been made, orders are issued by the industrial commission to remedy the violations of the law which have been observed. Reinspections are later made to determine whether there has been compliance. In the majority of cases, compliance is rather easily secured. When cooperation by the employer is not forthcoming, however, a "counsel letter" is sent to him, fixing a final date for compliance, if he desires to avoid prosecution. During one year, 1925, there were 7,259 "counsel letters" sent to owners of factories and mercantile establishments. Another method used in more serious cases is to issue a summons to the person failing to comply,

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Labor Legislation Review, June, 1917, "Labor Law Administration in New York," pp. 484-504.

[1] *Report on Condition of Woman and Child Wage-earners in the United States* (Sixty-first Congress, Second Session, Senate Doc. No. 645), p. 44.

[2] *Report on Condition of Woman and Child Wage-earners in the United States* (Sixty-first Congress, Second Session, Senate Doc. No. 645), p. 48.

requiring him to appear at a fixed time and place to show cause why prosecution should not be commenced. When he appears at the hearing, if the orders are not already complied with, a final date for compliance is fixed. If he fails to comply with the orders at the time fixed prosecution ensues. During a single year 7,365 cases were thus set for hearing. The result of this procedure was that the cases in which prosecution was necessary numbered only 2,861. In 2,347 of these cases, and in seven other cases instituted in the previous year, convictions were secured within the year. The leniency of the courts, however, is evidenced by the fact that in 1,306 of the convictions, sentence was suspended; while the fines for the 1,048 other convictions amounted to only $24,955.[1]

An interesting method of enforcing compliance, which is found in some states, is to give the authorities power to stop work on a machine or in an establishment which violates the law. Thus in several states inspectors may place upon machinery a notice forbidding its use until specified safety measures have been taken. In some states mines may be absolutely closed, and in 1915 legislation in Montana and Delaware extended the same principle to certain factories and workshops. According to the Delaware statute, a cannery violating the law may upon a third conviction be closed by the court, and the person convicted may be prohibited from engaging in the cannery business until further court order. California, in 1915, authorized the closing by the courts of labor camps, upon their failure to comply within a reasonable time with the sanitary provisions laid down for them. The California statutes also give the industrial accident commission the power to prohibit the use of dangerous machinery and to apply for an injunction to close a dangerous place of employment.[2]

It may be desirable that the administrative body charged with the enforcement of the labor laws should have the power to order the discontinuance of a building or machinery that is manifestly dangerous. It is questionable, however, whether this summary power should be placed in the hands of the

[1] See *Annual Report*, Industrial Commissioner, New York, 1925, pp. 12-15, and 67-68. A similar procedure prior to prosecution is followed in Wisconsin.

[2] Other states that have similar provisions are Michigan, Minnesota, New York, Ohio, and Pennsylvania.

inspector. In order to eliminate personalities and arbitrariness, provision should be made for a hearing before the same body that has the power to adopt industrial code rules and grant variations from such rules. Perhaps the same results can be obtained by simply giving the administrative body the right to apply for an injunction.

In American labor legislation, little attention has been paid to the careful adjustment of penalties to offenses. The amount of penalty seems to be determined very largely at random, and there is a great variety of penalties in the same state and in different states. Too frequently the idea seems to be that the more severe the penalty the greater the likelihood of enforcing compliance. This frequently fails of its purpose, because courts and juries often permit an offender to escape entirely rather than subject him to a penalty out of proportion, as they see it, to the offense.

Yet, a distinction must be made between penalties for a single offense and penalties for a continuing offense. Failure to return a child worker's employment permit may be treated as a single offense; but employment of the child beyond working hours may be treated as a continuing offense, repeated every day that the child is so employed. Here is a cumulative injury to the child which the law seeks to prevent, and, very properly, a cumulative penalty might be imposed, making each day for each child a separate and distinct offense. If the penalty, for example, is $10 to $100 for each offense, even the minimum penalty would accumulate effectively. Otherwise, if treated as a single offense for each child, no matter how long continued, the penalty might bear no adequate proportion to the profit derived from the child's labor.

This method of cumulative penalties has been more or less adopted, thereby making each day during which an employer fails to observe or comply with any order of the commission or any section of the statute a separate violation.[1] Cumulative penalty provisions, however, are construed very strictly by the courts, and the language of the statute must be made perfectly clear.

[1] California, General Laws 1920, Act 2781, Sec. 50; Colorado, Laws 1921, Sec. 4369; Ohio, Laws 1921, Secs. 871-44; Oregon, General Laws, 1920, Sec. 6780; Wisconsin, Statutes 1925, Secs. 101.18 and 103.15.

Another distinction of importance is that between a criminal action and a civil action. Formerly, when employers were mostly small employers with but little property, the criminal penalties of fine or imprisonment, which are the ordinary penalties for violation of police regulations, seemed to be appropriate. These criminal penalties are practically out of date when it comes to enforcing the law against corporations. In criminal prosecutions, moreover, the individual employer has many technical defenses based on the presumption of innocence. A readier and simpler method is the "action of debt," a civil action employed to recover taxes or penalties under the guise of a debt owing the state.[1] This form of action is now generally adopted in the case of railroad commissions and industrial commissions, along with the cumulative penalty. It is more effective against corporations, and it recognizes the cold fact that courts and juries are loath to impose criminal penalties on employers when their offense is the violation of laws enacted for the protection of labor.

Prosecutions generally are brought in justice courts or other inferior criminal courts. It is obvious that such courts are not equipped to decide technical questions, and the limitations imposed by rules of evidence on the admissibility of testimony make it practically impossible for the court to obtain the expert information and opinion essential to intelligent decision of such cases.

There are two classes of questions, often equally technical. One is the question of fact, the other of constitutionality of a statute or of reasonableness and validity of an administrative rule. A technical question of fact is, for example, whether a certain room is sufficiently ventilated or sufficiently lighted. A question of constitutionality or reasonableness is whether a statute or administrative rule limiting a woman's work to a certain number of hours is valid. Both involve questions of fact, but the two questions can be separated. If a justice's court, or a jury, as in the instance above referred to, refuses to convict an employer who is shown to have allowed a woman to work seventeen hours in face of a law restricting her work to

[1] Stockwell *v.* U. S., 13 Wall. 531 (1871); Chaffee *v.* U. S., 18 Wall. 516 (1873); Florida Central R. Co. *v.* Reynolds, 183 U. S. 471, 22 Sup. Ct. 176 (1902).

ten hours, it is really deciding not only the fact of violation, but also the reasonableness of the law. Hence, it is that in states which have labor departments with power to issue rules the attempt is made to separate the two questions. The question of fact is determined in a lower court; but the question of reasonableness or validity can be raised only in a different suit in a higher court. The employer is permitted first, by the provisions of the law, to test the reasonableness or validity of the rule in a hearing before the administrative body. Next, he has a right of appeal to a higher court on questions of law. If no such hearing or appeal is taken within a specified time, then no question can be raised in the inferior court except the fact of compliance or non-compliance with the rule or order of the labor department.[1]

A similar facility is afforded to the inferior court, in passing upon questions of fact, by the provision that the labor department may draw up specific standards fitted to each occupation, or even to a single shop, where the legislative standard is liable not to take into account real differences. These standards, if previously passed upon by representative committees of employers and employees, can be made both definite and practicable, and therefore not a matter of such controversy or opinion as to require expert testimony in the lower court.

This simplifies the work of the factory inspector in the field. He is the prosecuting witness. His opinion of whether the law is violated or not is set up against the opinion of the employer or his representative. All doubts are resolved in favor of the defendant. But with the more precise standards there is less dependence on weight of opinion. If a statute merely says that workshops shall be "sufficiently lighted," the factory inspector must set up his opinion against the employer's opinion as to whether the light in his shop is sufficient. The jury must then pass upon both the fact of violation and the opinion of the inspector. But if the administrative body upon investigation ascertains that one-quarter candle-power for every square foot of floor space is sufficient for that class of shops, then the in-

[1] California, General Laws 1920, Act 2107, Sec. 12, and Act 2781, Sec. 67; Massachusetts, Laws 1921, C. 149, Sec. 9; New York, McKinney's Consolidated Laws 1925, C. 31, Secs. 110-112; Ohio, General Code 1921, Sec. 871-29, 871-38, 871-40; Oregon, General Laws 1920, Sec. 6776; Wisconsin, Laws 1925, Secs. 101.11 and 101.13.

spector needs to prove only that the amount of light was less than this standard.

These provisions do not mean that less competent inspectors may be employed. They mean that much more time may be given to actual inspection and less to prosecutions. The inspector, in the ordinary prosecutions, wastes an incalculable amount of time in assembling and producing in court the evidence of the alleged violation. His current inspection work must be neglected in order that he may attend court, awaiting the trial of the case, or attempting to convince a court or jury of the accuracy and honesty of his observation of conditions out of which the alleged violation grew. Where he should be engaged in discovering violations and suggesting means of compliance, he is marshaling evidence and trying to convince third parties of deviations from ambiguous standards.

Various devices have been invented in the drafting of labor laws to determine whether the provisions of the law are being complied with. The possibility of detecting all violations by official inspection is obviously limited. An army of inspectors making constant visits would be required. The prosecution may be relieved of a portion of its burden of proof by a provision that certain facts shall constitute *prima facie* evidence. The burden is always on the prosecution to prove circumstances which constitute a violation of a statutory provision. Thus, where a statute forbids the employment of children under sixteen except under specified conditions, the prosecution for an alleged offense must prove the employment of the child, must prove that the child was under sixteen, and must prove that the circumstances authorizing the employment of a child of that age were not present. This ordinary rule respecting the burden of proof, however, may be altered by the legislature. The difficulty of enforcing the one-day-of-rest-in-seven law[1] has been considerably lessened in New York by a requirement that the employer shall post "a schedule containing a list of his employees who are required or allowed to work on Sunday and designating the day of rest for each," and shall file a copy of such schedule with the industrial commission. This provision reduces the necessity of inspection to the single question whether any employee named on the schedule as entitled to

[1] See "One Day of Rest in Seven," p. 296.

rest on any day is at work on that day. That in itself constitutes a violation of the substantive provision that "no employee shall be required or allowed to work on the day of rest so designated for him." Similar provisions are employed in enforcing laws regulating hours of labor.[1] The New York law regulating the employment of children under the age of sixteen requires the employer of such children to keep a record of the name, birthplace, age, and residence of such children and to produce such record for inspection by the agents of the industrial commission. The employer is also required to keep on file and to furnish on demand of the commission the child's employment certificate. If he cannot furnish the certificate of employment, the employer is required within a specified time to produce satisfactory evidence that the child is over sixteen, or to discontinue his employment. Proof of the commission's demand for evidence of the age of the child and of the employer's failure to produce such evidence is made *prima facie* evidence in a prosecution for the violation of a provision of the law that the child is under sixteen and unlawfully employed.[2]

Of the devices to assist the officials which have been made use of in this country, those which impose upon the employer the duty to keep some sort of current record of conditions or happenings in his plant are the most important aids to official inspection. Records of accidents, certified daily time reports, registers, and account books are frequently required by labor laws.

There is, however, a limitation on the extent to which the employer may be compelled to collect and record for official use the evidence of his own violation of the law. Our constitutions generally protect the individual against a requirement that he testify against himself. When the requirement of records becomes practically a system of compelling testimony against himself, the employer may refuse to comply and depend upon his constitutional guaranty.

Licensing a business practice or place of employment affords another means of increasing the possibilities of enforcement,

[1] See "Maximum Hours, Women," p. 255.

[2] California, 1925 Statutes, C. 123, Sec. 7; Oregon, General Laws 1920, Sec. 6700.

especially if the licensee be required to give bond. This method is employed in the regulation of employment offices and sweatshops. License requirements are ordinarily supplemented by a prohibition of action without the license. Failure to produce the license is thereby made proof violation. The license is usually issued on condition that the standards imposed by the law be complied with.[1] Fear of loss of the license and of summary recovery on the bond affords strong inducement for compliance. The license, however, does not entirely obviate the necessity for inspection or other means of obtaining evidence as to compliance by the licensee with the requirements of the law or the conditions of the license.

In the effort to secure enforcement of laws prohibiting or regulating sweatshops, resort has been had to the device of tagging the products of sweatshops that do not comply with the law.[2] In some cases the value of the tag is not due so much to the fact that it aids enforcement of provisions regulating the sweatshop industries as to the discouragement of

[1] Examples of such laws applied to employment offices are found in Alabama, 1923 Code, Secs. 696-699, 3980-3984; Arkansas, Acts 1923, Special Session, Act 4, Secs. 1, 2; California, General Laws 1920, Act 1373; Colorado, Compiled Laws 1921, Secs. 4295-4299; Connecticut, General Statutes 1918, Sec. 2333; Illinois, Revised Statutes 1925, C. 48, Sec. 76; Indiana, Annotated Statutes 1914, Sec. 7131, as amended by Acts 1921, p. 263; Louisiana, Acts 1918, Act No. 145, Secs. 1-8; Maine, Revised Statutes 1916, C. 42, Sec. 6, amended 1917, C. 139; Michigan, Public Acts 1925, Act 255; Minnesota, General Statutes 1923, Sec. 4246, as amended by C. 347, Laws 1925; Missouri, Revised Statutes 1919, Secs. 6751-6755; Montana, Revised Code 1921; Secs. 4157-4172; Nebraska, Compiled Statutes 1922, Secs. 7727-7738; Nevada, Revised Laws 1919, p. 2780, amended 1923, C. 67; New Jersey, Compiled Statutes 1924, Subj. 67; New York, McKinney's Consolidated Laws 1925, B. 19, Art. 11; Ohio, General Code 1921, Sec. 886, etc.; Oklahoma, General Laws 1921, Sec. 7184; Oregon, General Laws 1920, Secs. 6725-6737; Pennsylvania, Statutes 1920, Sec. 10132; South Dakota, Acts 1919, C. 190; Texas, Revised Statutes 1925, Art. 5210; Utah, Compiled Laws 1917, Sec. 2440, amended 1921, C. 48; Wisconsin, Statutes 1925, Secs. 105.01-105.16; Wyoming, Compiled Statutes 1920, Sec. 3463. Some of the states in which homework manufacture must be licensed are Indiana, Annotated Statutes 1914, Sec. 8034; Maryland, Annotated Code 1924, Art. 27, Sec. 301; Massachusetts, General Laws 1921, C. 149, Sec. 143; Michigan, Compiled Laws 1915, Sec. 5343; New York, McKinney's Consolidated Laws 1925, B. 19, Art. 13; Pennsylvania, Statutes 1920, Sec. 3461; Wisconsin, Statutes 1925, Sec. 103.44.

[2] Missouri, Revised Statutes 1919, Sec. 6835; New York, McKinney's Consolidated Laws 1925, C. 31, Sec. 360.

that industry by branding its products and discouraging their purchase by the public.

After the evidence of violation of the requirements of the law is secured, the marshaling and presentation of that evidence to the court in which a prosecution is conducted is of the greatest importance. Ordinarily, it is the business of the district attorney or the attorney-general to conduct prosecutions. The department, however, which administers the law violated is under obligation to secure the evidence of violation and present it to the prosecuting officer. In practice, other duties so absorb the time and attention of the attorney-general and the district attorney that they give little consideration to the preparation of prosecutions for violation of police regulations. The rules of evidence, especially in criminal prosecutions, are very technical. It is difficult even for a lawyer to determine what is relevant testimony. It frequently happens that a factory inspector, without legal training or sympathetic legal advice, bases a prosecution on testimony which, because of technical rules, will not be admitted by the courts, and therefore the prosecution falls. This need of sympathetic, constant legal assistance to administrative officials in securing and furnishing the evidence of violation has resulted, in many jurisdictions, in the assignment of a special assistant attorney-general, district attorney, or city counsel to attend to prosecutions for violations of laws enforced by a particular administrative department. An assistant to the corporation counsel in New York City devotes his entire time to advising the tenement house department and prosecuting violations of the tenement house law. In New York, instead of having a special deputy attorney-general assigned to the industrial commissioner, the legislature provided for a counsel and three assistants whose duty it was to assist in the preparation of prosecutions and in the conduct of such prosecutions in the courts.[1] By arrangements with district attorneys, counsel to the commission actually conducted the prosecutions in the criminal courts, but he did this subject to the control of the district attorney. When the New York labor law was recodified in 1921, the legal division in the Labor Department was abolished and the work turned over to an assistant counsel in the office of the attorney-general.

[1] New York, McKinney's Consolidated Laws 1916, C. 31, Sec. 48.

(7) *Cooperation by Pressure*

Penalties and prosecutions are coercive methods of administration. But the workmen's compensation laws adopted in several states indicate a new and important administrative principle. Prior to the adoption of these laws, the only inducements offered to the employer to prevent accidents to his employees were the liability laws and the factory acts. The employer was treated as a criminal, and naturally he revolted and obeyed only as little of the laws as he might be exposed to on account of his lack of political influence or the inefficiency of inspectors. But the compensation laws, by requiring him to pay for *all* accidents, instead of merely those he cannot escape, tend to bring upon him a universal pecuniary pressure, like that of taxation, which induces him to prevent *all* accidents and to provide for early recovery of the victims. This is especially true if the law is so drafted as to lay the emphasis on prevention and medical and surgical treatment.

This class of legislation is *cooperative,* instead of *coercive.* The employer now takes as much interest as the employee in having the factory inspectors efficient and helpful. Furthermore, he establishes his own "safety department," which is always watchful and far more efficient than the small number of state inspectors that the taxpayers will allow. In this way "social insurance" in its many forms of accident, health, invalidity, old-age, and unemployment insurance may be expected, if the laws are properly drafted and then properly administered, to bring about the cooperation of employer, employee, and the state, where the older methods of coercion were ineffective and productive of antagonism.

The insurance principle also provides an inducement for employers and employees to give sufficient of their time to the administration of labor law. This is the peculiar need and weakness of American administration. Private citizens leave administration to professional politicians. Employers hire attorneys to represent them in legislation. A kind of constant pressure is needed that will induce them to take part themselves in public administration exactly as they do in the administration of their factories. Financial gain or loss is this universal pressure, not depending on exhortation or public spirit.

Social insurance, properly organized and administered under the supervision of those who pay the bills, converts the prevention of accidents and the preservation of health from sentiment and humanitarianism into business and profits. It makes it worth while for employers to give time to public service.

Thus, social insurance accomplishes what, in France, is called *solidarism,* as a correction of individualism.[1] The health and welfare of every wage-earner is "affected by a public interest" when the industry or the community is required to make good the loss. Each laborer then becomes a "public utility." Individualism, while it highly rewards the fortunate individual, carries with it the sole responsibility and liability for his own misfortunes. The solidarism of social insurance enforces the joint responsibility of employer, employee, and the community.

But social insurance is an administrative rather than a judicial problem. It takes the question of individual liability out of the hands of the courts and places it in the hands of executives. It avoids litigation over past misfortunes and substitutes "social prevention" of future misfortunes. For this reason, the administrative officials of the state cannot successfully deal with social insurance except through the cooperation of employers and employees, and the latter will not effectually cooperate except through the inducement of financial gain. Hence, it is that well-considered schemes of social insurance distribute the burden of expense between employer, employee, and the state. This is plain in the form of health insurance, where the employee contributes a share of the insurance premiums. It may also be brought about in non-contributory schemes of accident compensation, where, in place of denying the employee any compensation at all in case of "wilful misconduct," his compensation is reduced, say, 10 or 15 per cent. This minimizes contests in court over "wilful misconduct," but at the same time forces the workman to contribute when he is plainly responsible.

This and other devices illustrate the differences between legislation with its court procedure, which penalizes the individual for past acts, and administration based on insurance which induces him to avoid future acts. The matter resolves

[1] Léon Bourgeois, "International Organization of Social Policies," *American Labor Legislation Review,* March, 1914, p. 186.

itself into a series of adjustments which balance the motive of pecuniary gain or loss against the carelessness, greed, or oppression that produces misfortune and suffering. These nice adjustments can be worked out only through the accumulated tests and trials of administrative investigations, where employers, employees, and officials join together, and not through partisan conflicts in legislatures or legal battles in court.

Thus, "solidarism" is that goal of labor legislation where it can be truly said that "an injury to one is the concern of all." On the financial side it is such an arrangement that all will equitably bear the burdens that fall upon each individual. On the side of human motives it is a departure from litigation and the fear of occasional criminal penalties to the adoption of continuous inducements for the prevention of misfortune and oppression. On the side of administration it is the cooperative investigation of conditions by employers, employees, and the state through representatives and officials in whose ability and integrity all have confidence. On the side of a broader social philosophy it is the recognition both of class struggle and common interest as permanent facts, and then the adjustment of laws and administration so as to equalize the struggle and utilize the common interest for a public benefit.

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Contain reports on contract labor, the padrone system, peonage, and immigrant banks.

Walz, W. E. Legal aid societies, their nature, history, scope, methods, and results. (Green bag, 1914. v. 26:101.)
Deals with the movement in the United States.

Ward, H. D. Peonage in America. (Cosmopolitan, 1905, v. 39:423-430.)
Summary and discussion of several peonage cases in the south, including Clyatt *v.* U. S.

Wilson, Henry. History of the rise and fall of the slave power in America. Boston, Houghton, Mifflin, n. d. 3 v.
A history of slavery in America from colonial times to the passage of the fifteenth amendment, the most detailed part being concerned with the Civil War.

Wolff, Henry W. Cooperation in agriculture. London, King, 1912. x, 378 p.
Describes in detail the methods of cooperation used in different countries. The author is a leading authority on cooperation.

Wood, Walter J. The place of the public defender in the administration of justice. Oakland, Cal., 1914. 32 p.
Address by the public defender of Los Angeles county before the California bar association.

III. COLLECTIVE BARGAINING

Allen, Henry J., and Gompers, Samuel. The Allen-Gompers debate. New York, Dutton, 1920.
A debate upon the Kansas industrial relations court act, with Governor Allen of Kansas and Samuel Gompers, president of the American federation of labor, on opposite sides.

.....**American Federation of labor.** Legal information bulletin. Washington, 1924-.
Reprints current decisions in important labor cases and makes comments thereon from labor's point of view. Published at irregular intervals.

Askwith, Lord. Industrial problems and disputes. London, Murray, 1920. 494 p.
Experiences of the man who for twenty years was the foremost industrial arbitrator in England.

Australia. Court of conciliation and arbitration. Commonwealth arbitration reports. Melbourne, 1904-.
Awards and memoranda of the commonwealth (federal) arbitration court of Australia.

Berman, Edward. Labor disputes and the President of the United States. New York, Longmans, Green, 1924. 284 p.
Historical account of intervention by the President in labor disputes, with particular attention to the war period.

Barnett, George E., and McCabe, David A. Mediation, investigation, and arbitration in industrial disputes. New York, Appleton, 1916. 209 p.
A study for the United States commission on industrial relations upon the mediation and arbitration machinery developed in this country.

Bryan, J. W. The development of the English law of conspiracy. (Johns Hopkins university studies in historical and political science, v. 27:133-161.) Baltimore, Johns Hopkins press, 1909.
History of the law of conspiracy in England. Only the last chapter deals especially with the law of conspiracy as developed in labor cases.

.....Proper bounds for the use

of the injunction in labor disputes. (Annals of the American academy of political and social science, v. 36:388-301.) Philadelphia, 1910.
A lawyer's criticism of the law of conspiracy as developed in American cases.

Canada. Department of labor. Labour gazette, Ottawa, 19-.
Monthly bulletin which always includes an account of all proceedings under the Canadian industrial disputes investigation act.

Commons, John R., and Gilmore, Eugene A. (ed.). A documentary history of American industrial society. v. 3, 4, and supplement. Cleveland, Arthur H. Clark, 1910. 10 v.
Reprints in full the records of the labor cases in the United States prior to Commonwealth *v.* Hunt (1842).

Condliffe, C. B. Experiments in state control in New Zealand. (International labour review, March, 1924. V. 9, pp. 334-360.)
Deals principally with the period 1921-1923.

Cooke, F. H. The law of combinations, monopolies, and labor unions. Chicago, Callaghan, 1908. lxix, 466 p.
The law applicable to labor unions. Argues in favor of a liberalization of trade union law.

Davies, Emil. The collectivist state in the making. "Collectivism and the labor problem," pp. 190-202. London, Bell, 1914. xviii, 267 p.
Discusses participation of government employees in determining conditions of labor.

Feis, Herbert. The Kansas court of industrial relations, its spokesman, its record. (Quarterly journal of economics, Aug., 1923. v. 37, pp. 705-733.)
An important account, written before the United States Supreme Court virtually destroyed the court.

Fisher, Clyde V. Use of federal power in the settlement of railway labor disputes. (Bulletin No. 303, United States Bureau of labor statistics.) Washington, Govt. print. off., 1922. 121 p.
An historical account of conciliation and arbitration in railroad labor disputes in the United States, with text of acts and bibliography.

Fitch, John A. The causes of industrial unrest. (chaps. xv, xvi, xvii.) New York, Harper, 1924. 424 p.
The existing law of labor combinations as a cause of industrial unrest.

Frey, John P. The labor injunction: an exposition of government by judicial conscience and its menace. Cincinnati, Equity pub. co., 1922. 197 p.
A criticism of the use of injunctions in labor disputes from the point of view of organized labor. Valuable as an expression of labor's feeling toward injunctions.

Gompers, Samuel. And yet they would "wish" it on us. (American federationist, 1915. v. 22: 333-337.)
Criticizes the industrial arbitration court of New South Wales for its action in reducing wages owing to the war.

.....Australasian labor regulating schemes. (American federationist, 1915. v. 22:253-263.)
Expresses the view that the arbitration courts and wages boards constitute a "judicial despotism."

Great Britain. Board of Trade. Reports on proceedings under the conciliation (trade disputes) act, 1896. London, 1897-.
Short survey of labor conditions throughout the year with special reference to disputes and their settlement; appendices giving tabular statements and detailed summaries of cases decided.

Great Britain. Ministry of labor. Report of proceedings under the conciliation act and of the arbitration under the munitions of war acts, 1914-1918. London, 1919.
Official account of the operation of the arbitration machinery of Great Britain during the World War.

Hale, William G. Injunction against interference with freedom of trade or employment; combinations, strikes, boycotts, etc. (In Pomeroy's Treatise on equi-

table remedies, 2nd Ed., 1919. v. 5, chap. xviii, pp. 4564-4646.)
The best account from a purely legal point of view of the law of labor combinations in the United States.

Hammond, Matthew B. British labor conditions and legislation during the war. New York, Carnegie endowment for international peace, 1919. 335 p.
Includes study of war-time anti-strike legislation and its results.

.....The Australian system of compulsory arbitration. (Proceedings American academy of political science, New York, 1917. v. 7, pp. 19-30.)
Favorable account of Australian law.

Higgins, Henry Bourne. A new province for law and order. London, Constable, 1922. 181 p.
An account of the compulsory arbitration in Australia by the man who was chief justice of the commonwealth arbitration court from 1907 to 1921.

Huggins, William L. Labor and democracy. New York, Macmillan, 1922. 213 p.
An argument for the Kansas industrial relations court by its first presiding judge and author of law creating this court.

Kennedy, Walter B. Law and the railroad labor problem. (Yale Law journal, Apr., 1923. v. 22, pp. 553-574.)
Opposed to anti-strike legislation on practical grounds.

League for industrial rights. (Formerly American anti-boycott association.) Law and labor, New York, 1919-.
A monthly periodical which is devoted mainly to accounts of current cases in the law of labor combination, but also contains editorial articles commenting upon phases of the law and industrial developments.

Mackintosh, Margaret. Government intervention in labor disputes in Canada. Kingston, Ont., departments of history, political and economic science, Queens university (Bulletin No. 47), 1924. 30 p. (Published, also, as a supplement to the Canadian labour gazette, Mar., 1925.)
The most recent study of the Canadian industrial disputes act. Favorable to law.

Martin, W. A. A treatise on the law of labor unions. Washington, Byrne, 1910. xxv, 649 p.
Trade union law as applied by conservative courts. Gives sample forms of bills of complaint and injunctions.

Mason, Alpheus T. Organized labor and the law with especial reference to the Sherman and Clayton Acts. Durham, N. C., Duke university press, 1925. 265 p.
Historical account, which stresses the interpretations given by the courts to the Clayton act.

McCassey, Sir Lynden. The industrial courts act, 1919. (Journal of comparative legislation, 1920. 3d series, v. 2, pp. 72-76.)
A brief account of the conciliation machinery of Great Britain, with especial reference to the industrial courts of 1919.

Merritt, Walter G. The struggle for industrial liberty. New York, League of industrial rights, 1922. 98 p.
Advocates a governmental policy toward labor unions and labor disputes, which is almost directly opposite to that presented in this book.

Monte, Carl H. Industrial arbitration. Indianapolis, Bobbs-Merrill, 1916. xlv, 351 p.
Study of existing natural and political agencies in various countries for avoiding strikes and lockouts.

Murphy, H. M. Wages and prices in Australia. Our labor laws and their effects. Melbourne, Robertson, 1917. 144 p.
A criticism of Australian compulsory arbitration and wage regulation by the chief inspector of factories in Melbourne.

National industrial conference board. Arbitration and wage fixing in Australia. (Research rept. No. 10.) Boston, 1918. 52 p.

.....Conciliation and arbitration in New Zealand. (Research rept. No. 23.) Boston, 1919. 46 p.

.....The Canadian industrial disputes investigation act. (Research rept. No. 5.) Boston, 1918. 28 p.

.....The Kansas court of industrial relations. (Research rept. No. 67.) New York, 1924. 103 p.
Studies by the leading employers' research organization of the country. Concise and fair.

New South Wales. The official year book of New South Wales. Sydney, annually.
Summarizes developments of state intervention in industry in New South Wales.

.....**Department of labor and industry.** Industrial gazette. Sydney, monthly.
Contains awards in force.

New Zealand. The New Zealand official year book. Wellington, annually.
Contains accounts of the arbitration court and of the conciliation councils.

.....**Department of labor.** Awards, recommendations, agreements, etc., made under the industrial conciliation and arbitration act, New Zealand. Wellington, annually.
Designed to "serve somewhat the purpose which the law reports fulfil in regard to other branches of legal administration."

Nicod, Jean. Freedom of association and trade unionism. An introductory survey. (International labour review, Apr., 1924. v. 9, pp. 467-480. Also, in Law and labor, Feb., 1925. v. 7, pp. 38-43.)
A review of the law regarding the right to form labor organizations in all countries.

Sayre, Francis B. A selection of cases and other authorities on labor law. Cambridge, Harvard university press, 1922. 1016 p.
A case book which includes all leading cases in the American and British law of labor combinations as well as many of the leading critical comments.

Selekman, Ben M. Nine years of the Canadian act. The experience with compulsory investigation and its application to the United States. (Survey, Mar., 31, 1917. v. 37, pp. 746-754.)
Critical account of Canadian industrial disputes investigation act.

Sells, Dorothy M. The development of state wage regulation in Australia and New Zealand. (International labour review, 1924. v. 10, pp. 607-629, 789-799, 962-1004.)
Deals with both the compulsory arbitration and trades board acts.

Slesser, Sir Henry. The law relating to trade unions. London Labour Pub. Co., 1921. 152 p.
The best brief account of British trade union law, by the solicitor general of the MacDonald cabinet.

Squires, Benjamin M. The industrial disputes investigation act of Canada. (Bulletin No. 233, United States bureau of labor statistics. Washington, 1918. 150 p.
The most extensive study of the manner in which the Canadian industrial disputes act has worked out by anybody in the United States.

United States. Bureau of labor statistics. Decisions of courts affecting labor. Washington, Govt. print. off., 1913-.
Annual or biennial bulletins reproducing all decisions of the United States and state supreme courts relating to labor law.

.....Board of mediation and conciliation. Railroad strikes and lockouts. A study of the laws of the principal countries of the world providing machinery for the peaceable adjustment of disputes between railroads and their employees, and the laws of certain countries for the prevention of strikes. Washington, Govt. print. off., 1916. 367 p.
Subtitle accurately describes scope.

Victoria. Victorian year book. Melbourne, annually.
Gives summary of the law and lists of existing or authorized wages boards.

Webb, Sidney, and Webb, Beatrice. Industrial democracy. London, Longmans, Green, 1902. lxi, 927 p. 2 v. in one.
Analyzes trade union structure, function and theory. The classic work on collective bargaining.

.....The history of trade unionism. London, Longmans, Green, 1911. lxvii, 558 p.
A narrative of the facts of trade union history in England, forming the complement to "Industrial democracy." A new introductory chapter

recounts the story of the Osborne judgment and gives a general survey of trade unionism in 1910.

Witte, Edwin E. Value of injunctions in labor disputes. (Journal of political economy, June, 1924. v. 32, pp. 335-356.)

How injunctions actually work and the results of their use.

IV. THE MINIMUM WAGE

American association for labor legislation. American labor legislation review. Quarterly, 1911-.

The following numbers contain material on the minimum wage: Feb. 1913, v. 3; 81-115, address and discussion; Dec., 1918, v. 8: 355-364, summary of minimum wage laws and commission awards in the United States; June, 1923, v. 13:131-137, minimum wage and the constitution; Sept., 1924, v. 14:226-233, economic justification of the legal minimum wage; Dec., 1925, v. 15:298-302, status of minimum wage legislation in the United States.

Andrews, Irene Osgood. Minimum wage legislation. Albany, Lyon, 1914. 219 p. (Printed also as Appendix III of the Third report of the New York state factory investigating commission. Albany, 1914. pp. 169-385.)

History, text, analysis, and operation of American and foreign laws; decision of Oregon supreme court upholding the state law.

.....The relation of irregular employment to the living wage for women. (American labor legislation review, June, 1915. v. 5:287-418. Printed also as Appendix X of the Fourth report of the New York state factory investigating commission. Albany, 1915. pp. 497-635.)

Need of considering income losses of women workers through unemployment and underemployment in making minimum wage awards; table of minimum wage awards to January 1, 1915.

Andrews, Irene Osgood, and Hobbs, Magaret A. Economic effects of the war upon women and children in Great Britain. New York, Carnegie endowment for international peace, 1918. 190 p.

Discusses war-time flow of women into industry, hours of labor, wages, safety and health, and related problems.

Brown, Rome G. The minimum wage. Review publishing co., Minneapolis, 1914. xv, 98 p.

Theoretical arguments against minimum wage legislation; alleged unconstitutionality of the Minnesota statute.

California. Industrial welfare commission. Biennial reports. 1913-.

Cost of living studies, reports of wage boards, investigations of working conditions of women and children in various industries, orders of the commission.

The **Case** for the minimum wage. (Survey, Feb. 6, 1915. v. 33: 487-515, 521-524.

Symposium, containing articles on the need, extent, and operation of minimum wage legislation in this country and abroad by well-known experts, including Florence Kelley, Louis D. Brandeis, M. B. Hammond, John A. Hobson, Howard B. Woolston, N. I. Stone, and Esther Packard.

Clark, John Bates. The minimum wage. (Atlantic monthly, Sept., 1913. pp. 289-297.)

Theoretical discussion setting forth the probable operation of the legal minimum wage, with particular emphasis upon those who might be thrown out of work by such laws.

Collier, Paul Stanley. Minimum wage legislation in Australia. (Appendix III of Fourth report of the New York state factory investigating commission, v. 4: 1845-2268. Albany, 1915. Also reprint.)

Exhaustive study of the operation and effects of the various methods of wage regulation in the separate Australian states and in the commonwealth.

Frankfurter, Felix, and Goldmark, Josephine. Brief for defendants in error upon reargument in the case of Stettler *v.* O'Hara *et al.*, constituting the industrial welfare commission. Oregon, 1916. 783 p.

Revised and enlarged edition of original brief prepared by Louis D. Brandeis. Selection of extracts favorable to the legal minimum wage; sets forth evil of low wages, benefits of an adequate wage, benefits of the legal minimum wage, and analogy with other labor legislation.

Hammond, Matthew B. Judicial interpretation of the minimum wage in Australia. (American economic review, June, 1913. v. 3:259-286.)

Analysis of the fundamental principles underlying decisions given under the laws establishing minimum wages in Australasia; based upon studies made during a personal visit to those countries in the winter of 1911-1912.

.....The minimum wage in Great Britain and Australia, (Annals American academy of political and social science, July, 1913. v. 48:22-36.)

Results secured under the Victorian and British wage board laws, based upon personal investigations.

.....Wages boards in Australia. I. Victoria. II. Boards outside Victoria. III. Organization and procedure. IV. Social and economic results of wages boards. (Quarterly journal of economics, 1914. v. 29:98-148, 326-361, 563-630.)

Contains a mass of detail concerning the wage boards and their economic effects.

Holcombe, Arthur N. The legal minimum wage in the United States. (American economic review, 1912. v. 2:21-37.)

Foreign systems of wage regulation, constitutional outlook in America, economic need of minimum wage legislation, and probable effect upon the relation between employer and employees.

Lippman, Walter. The campaign against sweating. (New republic, March 27, 1915. v. 2, No. 21, Part II, 8 p.)

Popular forceful article on the need for minimum wage legislation.

Massachusetts. Commission on minimum wage boards, Report. Boston, 1912. 326 p.

The report which led to the passage of the first American minimum wage law; investigation of wages of women and minors in Massachusetts candy factories, laundries, and retail stores; need of legislation.

.....Minimum wage commission. Annual reports. Boston, 1914-.

Contain investigations of women's wages, and operation of wage boards in various industries.

Merchants and manufacturers of Massachusetts. Executive committee. The minimum wage, a failing experiment; together with some sidelights on the Massachusetts experience. Boston, 1916. 58 p.

Effort to prove that to encourage the minimum wage law is to "sign a preliminary death warrant for many Massachusetts industries."

National consumers' league. The supreme court and minimum wage legislation. New York, New republic, 1925. xxviii, 287 p.

A collection of important articles on the discussion of the United States supreme court in the District of Columbia minimum wage case, with an introduction by Roscoe Pound.

New York. State factory investigating commission. Fourth report. Albany, 1915.

Wages in New York state in mercantile establishments; in the shirt, paper box, confectionery, and button industries; in New York city in the millinery trades; relation of irregular employment to the living wage for women; cost of living; living conditions; opinions on minimum wage legislation.

Oregon. Industrial welfare commission. Biennial reports. Salem, 1915.

Include orders issued by the commission.

Persons, Charles E. Estimates of a living wage for female workers. (Quarterly publications of the American statistical association, June, 1915. v. 14: 567-577.)

Raynaud, Barthelmey. Vers le salaire minimum: étude d'économie et de législation industrielles. Paris, Librairie de la société du recueil Sirey, 1913.

Detailed theoretical and historical study.

Ryan, John Augustine. A living wage; its ethical and economic

aspects. New York, Macmillan, 1906. 346 p.
Emphasizes especially the ethical and economic bases and the present need for minimum wage legislation in the United States.

Seager, Henry Rogers. The theory of the minimum wage. (American labor legislation review, Feb., 1913. v. 3:81-91.)
A statement of the underlying theory of minimum wage legislation together with its probable results upon the organization of industry and upon other problems of labor legislation; contains discussion by John R. Commons, Paul U. Kellogg, M. B. Hammond, George W. Anderson, Henry Abrahams, G. W. Noyes, Edward F. McSweeney, George G. Groat, and Emily Green Balch.

Smith, Constance. The case for wages boards. National anti-sweating league, London, 1908. 94 p.
Principal features of sweating system in England and legislative action to remedy it.

Snowden, Philip. The living wage. London, Hodder and Stoughton, 1913. 189 p.
Discussion of the benefits of the legal minimum wage, including experience gained under the British trade boards act since 1910.

Streightoff, Frank Hatch. Distribution of incomes in the United States. (Columbia university studies in history, economics, and public law, v. 52, No. 2.) New York, Longmans, Green, 1912. 171 p.
Analyzes available data and argues for better information. Estimates that at least half the males aged sixteen or over in gainful occupations were earning less than $626 a year.

Tawney, Richard H. The establishment of minimum rates in the chain-making industry under the trade boards act of 1909. London, Bell, 1914. 157 p.
Intensive study of conditions in the English chain-making industry before and after the fixing of minimum rates by a trade board.

.....The establishment of minimum rates in the tailoring industry under the trade boards act of 1909. London, Bell, 1915. 274 p.
Application of act to 140,000 workers, advance in wages, effects on employment and on trade unionism, administrative difficulties, especially in case of home workers.

United States. Bureau of labor statistics. Bulletins. Washington, Govt. print. off., 1895-.
Numbers dealing especially with the minimum wage include: No. 167, "Minimum wage legislation in the United States and foreign countries," C. H. Verrill; No. 176, "Effect of minimum wage determinations in Oregon," Marie L. Obenauer, Bertha von der Nienburg.

.....Monthly labor review, Washington, Govt. print. off., 1915-.
Gives reports of cost of living and wage investigations, and orders of the commissions.

.....**Woman in industry service.** Bulletins. Washington, Govt. print. off., 1919-.
Contain studies of women's wages and working conditions. No. 4, "Wages of candy makers in Philadelphia in 1919."

Washington. Industrial welfare commission. Biennial reports, Olympia, 1915-.
Operation of the minimum wage law, emphasizing effect on wages and efficiency.

Webb, Sidney. The economic theory of a legal minimum wage. (Journal of political economy, 1912. v. 20:973-998.)
Summary of the theoretical and practical arguments in favor of the minimum wage, illustrated by experience under existing laws; comprehensive statement in favor of minimum wage legislation.

See also under Collective bargaining: Great Britain, Kennaday.

V. HOURS OF LABOR

American association for labor legislation. American labor legislation review. Quarterly, 1911-.
For articles concerning hours see annual indices.

Archbald, Hugh. The four-hour day in coal. New York, Wilson; London, Grafton, 1922. 148 p.

Baker, Elizabeth F. Protective labor legislation. New York, Columbia university, 1925. 467 p.
Written with special reference to women in the state of New York with application to a wider field. Discusses attitude of courts, enforcement and effects of hour legislation.

Ballard, S. Thurston. Eight-hour shifts in the milling industry. (American labor legislation review, March, 1914. v. 4:117-120.)
Gives experience of one industry using eight-hour shifts.

Blum, Solomon. Labor economics, pp. 56-62. New York, Holt, 1925.

Bogardus, E. S. The relation of fatigue to industrial accidents. (American journal of sociology, 1911-1912. v. 17:206-222, 351-374, 512-539.)
Study of the effect of fatigue on the system and an attempt to correlate working hours and accident frequency.

Brandeis, Louis D., and Goldmark, Josephine. Brief in the case of Ritchie *v.* Wayman. Illinois, 1909. 610 p.
The dangers of long hours, benefits of short hours, desirability of uniformity, reasonableness of the ten-hour law for women.

.....Brief in the case of People *v.* Charles Schweinler press. New York, 1915. 529 p.
Argues the constitutionality of prohibiting night work for women.

Commons, John R., and Andrews, John B. Documentary history of American industrial society. Cleveland, Clark, 1910.
V. 8:81-210, contains documents illustrative of the movement to decrease hours of labor, v. 9: 24-33, the growth of the philosophy of hour limitation.

Federated American engineering societies. Committee on work periods in continuous industry. Twelve-hour shift in industry. New York, Dutton, 1922. 302 p.
Contains an authoritative account of hours of work in continuous industries of the United States and effects upon production where a change has been made from the twelve-hour to shorter shifts.

Fitch, John A. Causes of industrial unrest. Chap. II. New York, Harpers, 1924.

.....Sunday and rest day labor laws in the United States. (New York department of labor bulletin No. 45:377-403. Albany, 1910.)
A review of court decisions on Sunday rest day laws showing that their justification by virtue of the police power applies even more clearly to the one-day-of-rest-in-seven laws.

.....Judicial basis for legislative restriction of hours of labor of adult males. (New York department of labor bulletin No. 46:90-121. Albany, 1911.)
Critical review of court decisions.

.....The steel workers. The Pittsburgh survey. New York, Charities publication committee, 1911. 380 p.
Treats of the results of a seven-day week and twelve-hour day.

Florence, P. Sargent. Individual variations in efficiency and the analysis of the work curve. Kiel university, 1924.

.....Economics of fatigue and unrest, and the efficiency of labor in industry. New York, Holt, 1924. 426 p.
Analyzes large collection of data derived from experiments and practical experience and makes a scientific estimate of business losses due to fatigue and unrest of workers. In regard to hours, a conclusion is that reduction of hours increases hourly output and decreases absence and accidents.

Frankfurter, Felix, and Goldmark, Josephine. Brief for defendant in error in the case of Bunting *v.* Oregon. Oregon, 1915. 2 v. 984 p.
Successful argument, based on economic data, for constitutionality of Oregon ten-hour law for men.

Freund, Ernst. Constitutional aspects of hour legislation for men. (American labor legislation review, March, 1914. v. 4: 129-132.)
Suggestion of possible principles on which to base hour legislation.

.....Constitutional limitations and legislation. (Proceedings of third annual meeting of the

American association for labor legislation, pp. 51-71. New York, 1910.)
Critical discussion of development of theory of constitutionality of hour legislation.

.....The constitutional aspects of the protection of women in industry. (Publications Academy of political science, 1910. v. 1: 162-184.)

Garretson, Austin B. Long hours in railroading. (American labor legislation review, March, 1914. v. 4:120-128.)
Personal experiences and statistics of hours and casualties.

Goldmark, Josephine. Fatigue and efficiency; a study in industry. New York, Charities publication committee, 1912. xvii, 591 p.
Shows necessity for regulation of working hours to prevent overfatigue and exhaustion.

.....Handbook of laws regulating women's hours of labor, and a standard law embodying the best provisions of the most effective statutes now in force. New York, National consumers' league, 1913. 56 p.

.....The inalienable right to rest. (Survey, May 24, 1913. v. 30:264-266.)
Comment on favorable decision of Mississippi supreme court upholding state's ten-hour law for factory workers.

.....U. S. supreme court and the eight-hour day. (Survey Mar. 20, 1915. v. 33:677-678.)
Brief statement of recent court decisions.

Goldmark, Josephine, and Hopkins, Mary D. Comparison of an eight-hour plant and a ten-hour plant. Bulletin No. 106, public health service. Washington, 1920.

Great Britain. Industrial fatigue research board of the department of scientific and industrial research and the medical research council. Reports. London, 1917.
Among important reports concerning hours are: No. 5, "Fatigue and efficiency in the iron and steel industry," 1920; No. 24, "Comparison of different shift systems in the glass trade," 1924; No. 32, "Studies in repetitive work with special reference to rest periods," 1925.

.....**Home office.** Report of departmental committee on the night employment of male young persons in factories and workshops. Minutes of evidence and appendices. London, Wyman, 1913. 289 p.

.....Report on the acts for the regulation of the hours of employment in shops in Australia and New Zealand, by Ernest Aves. 1908. 218 p.
The advantages and risks of limiting hours of labor compared; decision in favor of limitation based on increased efficiency of service.

.....**Ministry of munitions.** British health of munition workers' committee memoranda. London, 1915, 1916. (Also reprints by United States Bureau of labor statistics, Bulletins No. 221, 222, 223, 230, 249.)
Strong recommendations, on basis of war experience, for shorter hours and better conditions as a means of securing larger output.

Hoopingarner, Dwight L. Labor relations in industry, chap. XVII. New York and Chicago, Shaw, 1925.

Interchurch world movement. Commission of inquiry. Report on steel strike of 1919. New York, Harcourt, 1920. 277 p.

.....Public opinion and the steel strike. New York, Harcourt, 1921. 346 p.
Both these books contain considerable information concerning hours in the steel industry.

International association for labor legislation. Report of the special commission on hours of labor in continuous industries. London, Pioneer press, 1912. 26 p.
Comparison of actual conditions in different countries and the results obtained by introducing the eight-hour, three-shift, system.

International labor office. Studies and reports, series D (wages and hours) and special reports on hours. Geneva, 1919-.

Kelley, Florence. The sex problems in industrial hygiene. (American journal of public hygiene, June, 1910. v. 20:252-257.)
Brief plea for legal regulation of the hours of labor of women to prevent excessive fatigue.

Lee, Frederic S. The human machine and industrial efficiency. New York, Longmans, Green, 1918. v. 119 p.
Scientific data reinforcing the case for short hours and good working conditions.

Lever, William H. L. (Lord Leverhulme). The six-hour day and other industrial questions. London, Allen, 1918. 331 p.
Proposal by a prominent soap manufacturer for the introduction of six-hour shifts in his plant.

Leverhulme, Lord. The six-hour day. New York, Holt, 1919. 344 p.

Manly, Basil M. Work periods in continuous night and day occupations. (American labor legislation review, March, 1914. v. 4: 109-116.)
Argues for eight-hour shifts in continuous industries.

Milhaud, Edgar. Results of the adoption of the eight-hour day: 1. The eight-hour day and technical progress. 2. The eight-hour day and the human factor in production. (International labour review, Dec., 1925, pp. 820-853, and Feb., 1926, pp. 175-210.)
Summarizes the report of an investigation authorized by the International labor office regarding the effects of the introduction of the eight-hour day in European countries following the war. The gist of the conclusion is that "the view is gaining ground that the value of this reform from the view of output consists in the fact that it stimulates energy on the part of the workers and initiative on that of the employers."

National industrial conference board. Research reports. New York and Boston, 1918-.
For reports concerning hours see list of publications.

New York. Department of labor. Bulletins. Albany.
For those concerning hours see index of publications.

.....State factory investigating commission. Second report. "Night work of women in factories," pp. 193-215. Albany, 1913.
Summarizes investigations and the legal status of night work.

Persons, Charles E.; Parton, Mabel; and Moses, Mabelle. Labor laws and their enforcement. "The early history of factory legislation in Massachusetts; from 1825 to the passage of the ten-hour law in 1874," pp. 1-129. "Hours of labor: Of women and children—Of public employees," pp. 314-315. New York, Longmans, Green, 1911.
Gives history of the agitation for shorter hours in Massachusetts and the situation in 1911.

Price, George M. Night work of women. (In Second report of the New York state factory investigating commission, Albany, 1913, pp. 439-459.)
Investigations in a cordage mill, and analysis of the personal histories of 100 women night workers.

Spalding, Henry S. Social problems and agencies, Part I, chap. IX and bibliography. New York, Benziger, 1925.

United States. Coal commission. Report submitted to legislative committees on mines and mining, Dec., 1923. Washington, Govt. print. off., 1925. 5 v.
Reports thorough investigation of conditions in anthracite and bituminous coal mines; see "Hours of labor" in index at end of v. 1.

.....Final report of industrial commission. "Hours of labor," v. 19:763-793. Washington, 1902.
Effect of reduction of working time on output and development of legal theory.

.....Report on condition of woman and child wage-earners in the United States. (Senate doc. No. 645, 61st Cong., 2d sess.) Washington, Govt. print. off., 1910-1912. 19 v.
Report of extensive official investigations into the cotton, clothing, glass, and silk industries, laundries, etc,

.....Report on conditions of employment in the iron and steel industry in the United States. (Senate doc. No. 110, 62d Cong., 1st sess.) Washington, Govt. print. off., 1911-1912.
V. 1 deals with wages and hours of labor; v. 2 gives detailed tables in regard to the same; v. 3 treats of the various factors affecting the health and efficiency of the working force, such as the seven-day week and the twelve-hour day.

.....**Bureau of labor.** Bulletins. Washington, Govt. print. off., 1895-1912.
No. 52, "Child labor in the United States," H. R. Sewell; No. 96, "Working hours, earnings, and duration of employment of women workers in Maryland and California, 1911," Marie L. Obenauer.

.....**Bureau of labor statistics.** Bulletins. Washington, Govt. print. off., 1912-.
See series, "Wages and hours of labor," in list on final pages of latest bulletin.

.....**Children's bureau.** Bulletins and charts. Washington, Govt. print. off., 1912-.
See annual lists of publications issued by bureau.

.....**Women's bureau.** Bulletins and charts. Washington, Govt. print. off., 1918-.
See list of publications issued by bureau.

.....Monthly labor review. Washington, Govt. print. off., 1915-.
Gives digests of investigations into hours in various industries, and legislation on the subject.

.....**National war labor board.** Memorandum on the eight-hour working day. Washington, Govt. print. off., 1918.
Actual effects of shorter work day in increasing production; summary of existing eight-hour legislation for men.

.....**Treasury Department. Public health service.** Comparison of an eight-hour plant and a ten-hour plant. (Public health bulletin No. 106, Josephine Goldmark and Mary D. Hopkins.) Washington, Govt. print. off., 1920. 213 p.
Careful experimental study, showing superiority of eight-hour plant in maintenance of output, reduction of lost time, more incentive to individual output, and fewer accidents.

Van Kleeck, Mary. Working hours of women in factories. (Charities, 1906-1907. v. 17:13-21.)
Describes actual conditions, non-enforcement of ten-hour law, and results in physical condition of working women.

Vernon, H. M. Industrial fatigue and efficiency. London, Routledge; New York, Dutton, 1921.

Watkins, Gordon S. Introduction to the study of labor problems, chap. VII. New York, Crowell Co., 1922.

See also under Safety and health: Keeling.

VI. UNEMPLOYMENT

American association for labor legislation. American labor legislation review. Quarterly, 1911-.
For articles concerning unemployment see annual indices.

Andrews, John B. A practical program for the prevention of unemployment in America. New York, 1914. 24 p.
A number of constructive, practical suggestions looking to the prevention of unemployment through the establishment of public employment exchanges, systematic distribution of public work, regularization of industry, unemployment insurance, and other helpful measures including constructive care of the unemployable.

Der Arbeitsnachweise in Deutschland. Halbmonatsschrift der Centralstelle für Arbeitsmarktberichte. Zugleich Organ des Verbandes deutscher Arbeitsnachweise. (Formerly "Der Arbeitsmarkt.") Berlin, 1897-.
The leading source of information on the condition of the German labor market and on the operations of the German labor exchanges.

Astor, J. J., and others. The third winter of unemployment. London, King, 1923. 350 p.

.....Is unemployment inevitable? London, Macmillan, 1924. 388 p.

Berridge, W. A. Cycles of unemployment in the United States 1903-1922. (Pollak foundation for economic research.) Boston, Houghton, 1923. 88 p.

Beveridge, William Henry. Unemployment; a problem of industry. London, Longmans, Green, 1912. 405 p.

Discusses the problem and its limits, sources of information, seasonal fluctuations, cyclical fluctuation, the reserve of labor, loss and lack of industrial quality, the personal factor, remedies of the past, and principles of future policy. Valuable appendix on public labor exchanges in Germany.

Beveridge, W. H., and Rey, C. F. Labor exchanges in the United Kingdom. (Quarterly bulletin of the international association on unemployment, July, 1913. v. 3:767-825.)

Authoritative description of British employment exchange system and its methods of operation.

Blum, Solomon. Labor economics, chaps. VIII, IX and X. New York, Holt, 1925.

Brissenden and Frankel. Labor turnover in industry, pp. 2-3. New York, Macmillan, 1922.

California. Commission of Immigration and housing. Report on unemployment. State print. off., 1914. 73 p.

Supplement to first annual report. Recommendations for the elimination of unemployment, including state labor exchanges, regulation of private employment agencies, housing regulation, unemployment insurance, rural credits, state land bureau and other points.

Chase, Stuart. The tragedy of waste, chaps. III and VIII. New York, Macmillan, 1925.

A graphic presentation of industrial and human waste due to unemployment.

Chicago. Commission on the unemployed. Report. Chicago, 1914.

Results of two years' intensive study.

Edie, Lionel D. Economics, principles and problems, pp. 601-611. New York, Crowell, 1926.

Federated American engineering societies. Committee on elimination of waste in industry. Waste in industry, chap. XI. New York, McGraw-Hill, 1921.

A scientific discussion of the part which unemployment plays in the sources and causes of waste.

Feldman, H. Regularization of employment. New York, Harpers, 1925. 437 p.

A study begun as a research report for the President's unemployment conference in 1921, expanded and published under the auspices of the American management association. It sums up admirably the evil effects of the growing insecurity of employment as well as the new American emphasis upon prevention, particularly what is being done by business men in regularizing employment in their own plants.

Fitch, John A. Causes of industrial unrest, chap. V. New York, Harper, 1924.

Great Britain. Board of trade. Abstract of labor statistics of the United Kingdom. London, annually.

Contains especially fluctuations in employment, unemployment insurance, operation of labor exchanges, women's employment bureaus, distress committees, trade union unemployed benefits.

Great Britain. Joint committee on labor problems after the war. The problem of unemployment after the war. London, Cooperative printing society limited, 1917. 7 p.

Memoranda on the prevention of unemployment and the necessity for the revision of the unemployment insurance acts.

.....Joint committee on unemployment. Unemployment: a labour policy. London, Labor party, 1921. 48 p.

Report of committee appointed by the parliamentary committee of the trades union congress and the labor party executive, together with resolutions adopted by the special trade union and labor conference, January, 1921.

.....Ministry of labor. Labour gazette. London, monthly, 1893-.

Regularly contains sections on the labor market, unemployment insur-

ance, employment in the principal industries, and public labor exchanges.

.....**Royal commission on poor laws and relief of distress.** Report of the Royal commission on the poor laws and relief of distress. Part VI, "Distress due to unemployment." pp. 303-445. London, 1909.

.....The Minority report of the Poor law commission. . . . London. Printed for the National committee to promote the break-up of the Poor law, 1909. 2 v.

Minority report by Sidney and Beatrice Webb; Part II, "Public organization of the labor market," contains: The able-bodied under the unemployed workmen act, the distress from unemployment, proposals for reform.

Harrison, Shelby M., and associates. Public employment offices. New York, Russell Sage foundation, 1924. 685 p.

Hart, Hornell N. Fluctuations in unemployment in cities of the United States 1902-1917. Cincinnati, 1918.

Studies from the Helen S. Trounstine foundation. v. 1, No. 2.

Hexter, Maurice B. Social consequences of business cycles. Boston, Houghton, 1925. xii, 206.

Hobson, John A. The morals of economic internationalism. Boston and New York, Mifflin, 1920. 69 p.

Discusses briefly the international causes of unemployment.

.....Economics of unemployment. London, Allen, 1922. 157 p.

Hoopingarner, Dwight L. Labor relations in industry, chap. XV and bibliography. Chicago and New York, Shaw, 1925.

International association of public employment services. Proceedings of annual meeting, 1920. Ottawa, Canadian department of labor, 1920.

Contains valuable articles on various phases of unemployment. For reports of proceedings of other meetings of this organization see list of publications of United States bureau of labor statistics, series on employment and unemployment.

International association on unemployment. Bulletin trimestriel de l'Association internationale pour la lutte contre le chômage; edited by Max Lazard. Paris, 1911-.

Contains articles by European and American specialists, in English, French, and German. The issues which have appeared to date have dealt with the following topics: 1911, No. 1, "Unemployment insurance"; No. 2, "Employment bureaus," 1912; No. 1-2, "Relation of child labor to unemployment"; No. 3, "Relation of emigration and immigration to unemployment, employment bureaus for agricultural workers"; No. 4, "Proceedings of the third session of the International committee on unemployment," 1913; No. 1, "Aid to the unemployed"; No. 2, "Statistics of unemployment"; No. 3, "Results of the international study of public employment exchanges in 1911"; No. 4, "Reports on unemployment and migration." 1914, No. 1, "International reports on the operation of unemployment insurance systems, reports on unemployment and public works"; No. 2, "Working of unemployment insurance in England," "Equilibrium between production and consumption," "International statistics on unemployment."

International labor office. Studies and reports, series C (unemployment) and special reports on employment. Geneva, 1919-.

Kellor, Frances A. Out of work. New York, Putnam, 1915. 569 p.

Discussion of the extent of unemployment in America, unemployment among women and children, employment agencies, unemployment insurance, criticism of remedies proposed, and a program.

King, Wilford I. Employment, hours and earnings in prosperity and depression, United States, 1920-1922. New York, National bureau of economic research, 1923. 147 p.

Results of a survey made by the national bureau of economics for the President's conference on unemployment.

Kirkconnell, Watson. International aspects of unemployment. New York, Holt, 1923. 217 p.

Klein, Philip. Burden of unemployment. New York, Russell Sage foundation, 1923. 260 p.

A survey of unemployment relief measures in fifteen cities during the

winter of 1921-1922. Both as to findings and conclusions, this investigation follows closely the earlier published studies—notably the comprehensive report with standard recommendations prepared in 1914-1915 by the American association for labor legislation, with the cooperation of social workers in 115 cities, as well as the brief "follow-up" survey of 1920-1921.

Lascelles, E. C. P., and Bullock, S. S. Dock labour and decasualisation. (London school of economics.) London, King, 1924. 201 p.

Lauck, Wm. J. Conditions of labor in American industries. New York and London, Funk and Wagnalls, 1917. 403 p.

Report on investigations by W. Jett Lauck and Edgar Sydenstricker of conditions causing irregular employment.

.....Irregularity of employment of railroad workers. (Mimeographed.) Chicago, 1921.

Presented by W. J. Lauck before the United States railroad labor board.

Leiserson, Wm. M. A federal labor reserve board for the unemployed. Annals of American academy of political science, Jan., 1917. Reprint, 15 p.

Outline of a plan for administering the remedies for unemployment. A similar outline by the same author is printed in the proceedings of the national conference of charities and corrections, pp. 161-176, 1916.

.....The problem of unemployment to-day. Reprinted from the Political science quarterly, Mar., 1916. New York, Ginn, 1916. 24 p.

.....The theory of public employment offices and the principles of their practical administration. pp. 27-46. (Reprinted from Political science quarterly, Mar., 1914. v. 29, No. 1.) New York, Ginn, 1914.

Comprehensive review of the subject, with suggestions for operation of efficient exchanges.

Lescohier, Don D. The labor market. New York, Macmillan, 1919. 338 p.

Brilliantly analyzes the causes of fluctuation in American labor supply and demand, and discusses methods for reducing it. Based on author's wide first-hand experience as well as on extensive acquaintance with the literature of the subject.

Lewisohn, Sam A., Draper, Ernest G., Commons, John R., and Lescohier, Don D. Can business prevent unemployment. New York, Knopf, 1925. 226 p.

This book by a group of business men and economists describes 114 outstanding experiments by which United States firms (names and addresses given) have pioneered in the stabilization of employment within their own establishments. A clear, convincing and impressive recital.

Mess, H. A. Casual labor at the docks. London, Bell, 1916.

The scramble for work, irregular earnings and their consequences, suggestions for decasualization.

Mitchell, Wesley C., and others; edited by Edie, Lionel D. Stabilization of business. New York, Macmillan, 1923. xii, 399.

The problem of business policies as they relate to business cycles is here analyzed by a group of special writers of established reputation. The dominating theme is the degree to which it is possible and desirable to control the business cycle, and the business policies which are sound and practical toward that end.

Morley, Felix. Unemployment relief in Great Britain. London, Routledge, 1924. 203 p.

National catholic war council. Committee on special war activities. Unemployment. Washington, 1919. 16 p.

Reconstruction pamphlet, No. 3.

National employment bureau. Hearings before the Committee on labor, House of representatives, 63d Cong., 2d sess. Washington, Govt. print. off., 1914. 112 p.

Three parts; hearings on June 5, June 12, and July 13, 1914, on the Murdock and MacDonald bills.

New York. Commission on employers' liability and other matters. Third report, "Unemployment and lack of farm labor." Albany, 1911. 245 p.

Study of conditions in New York state and brief description of unemployment insurance plans in force abroad.

.....Department of labor. Bulletins. Albany.

For those concerning unemployment see index of publications.

Parker, C. H. Casual labor and other essays. New York, Harcourt, 1920. 199 p.

President's conference on unemployment. Report Washington, Govt. print. off., 1921. 178 p.

.....Business cycles and unemployment. New York, McGraw-Hill, 1923. 405 p.

Report and recommendations by a committee of the conference including an investigation made under the auspices of the national bureau of economic research.

.....Seasonal operation in the construction industries. New York, McGraw-Hill, 1924. 213 p.

Report and recommendations of a committee of the conference, with foreword by Herbert Hoover.

.....Seasonal operation in the construction industries. Washington, Govt. print. off., 1924. Pamphlet, 24 p.

Summary of above report.

Rowntree, B. Seebohm. The way to industrial peace and the problem of unemployment. London, 1914. 182 p.

Rowntree, B. Seebohm, and Lasker, Bruno. Unemployment, a social study. London, Macmillan, 1911. 317 p.

Account of a detailed investigation of unemployment in York, together with suggestions for remedying the evils which it disclosed.

Shillady, John R. Planning public expenditures to compensate for decreased private employment during business depressions. New York, Mayor's committee on unemployment, 1916. 26 p.

This address by the chairman of the Mayor's committee is printed in condensed form in the proceedings of the national conference of charities and corrections, 1916. Pp. 176-191.

Slichter, Sumner H. The turnover of factory labor. New York, Appleton, 1919. xiv, 460 p.

Exhaustive and authoritative treatment of the amount, cost, causes, and means of reducing the shifting of working forces.

Smelser, D. P. Unemployment and American trade unions. Baltimore, Johns Hopkins press, 1919. 154 p.

Contains unemployment statistics, the trade union theory of unemployment, account union employment bureaus, etc.

Spalding, Henry S. Social problems and agencies. Part I, chap. XI. New York, Benziger, 1925.

Trades-union congress. Report of proceedings of annual meeting, Sept., 1920. London, Co-operative print. co., 1920.

Resolution and discussion on unemployment, pp. 305-309.

United States. Bureau of education. Juvenile labor bureaus and vocational guidance in Great Britain. (Its Bulletin, No. 482. 13-17.)

.....The school and the start in life: a study of the relation between school and employment in England, Scotland, and Germany. (Its Bulletin, 1914, No. 4, whole No. 575.) Washington, Govt. print. off., 1914. 146 p.

Contains much information of value in regard to methods of juvenile labor exchanges and juvenile placement work.

.....**Bureau of labor statistics.** Bulletins. Washington, Govt. print. off., 1912-.

See series "Employment and Unemployment" in list on final pages on latest bulletin.

.....**Federal reserve board.** Federal reserve bulletins. Washington, Govt. print. off., 1915-.

The monthly bulletin contains an index of production and employment for the various industries and valuable summaries on economic conditions. See Jan., 1924: 6; Jan., 1925: 34; Feb., 1925, 71.

.....Monthly labor review. Washington, Govt. print. off., 1915-.

Furnishes data on labor turnover, operation of public employment offices, and related topics.

.....**House committee on labor.** National employment bureau hearing on H. R. 16130 and H. R. 17017, June 5-July 13, 1914. Washington, Govt. print. off., 112 p.

Statements of Victor Murdock, John B. Andrews, Walter L. Sears, Frances Kellor, William M. Leiserson, and others.

.....National employment bureau. Hearing on H. R. 5783, Feb. 3, 4, 10, and 17, 1916. Washington, Govt. print. off., 1916. 111 p.
Statements of William B. Wilson, B. A. Sekely, Royal Meeker, and others.

.....Joint committee on labor. National employment system. Hearings on S. 688, S. 1442, and H. R. 4305, 1919. Washington, Govt. print. off., 1919. 2 v.

.....Employment service. Industrial employment information bulletin. Washington, Govt. print. off., monthly, 1921-.

Von Mayr, G., and Varlez, Louis. La statistique du chômage. Ghent, 1913. 186 p.
Report of the special committees appointed by the International statistical institute and the International association on unemployment, with recommendations for more frequent, general, and uniform gathering of statistics.

Watkins, Gordon S. Labor problems, chap. XI. New York, Crowell, 1922.

Webb, Sidney. Seasonal trades, by various writers, with an introduction by Sidney Webb. London, Constable, 1912. 410 p.
The outcome of a seminar at the London school of economics and political science during the session of 1910.

Webb, Sidney, and Webb, Beatrice. The prevention of destitution. London, 1911. 348 p.
Treats of sweating and unemployment as causes of destitution, how to prevent unemployment and underemployment, insurance, the enlarged sphere of voluntary agencies in the prevention of destitution, the need for a common registrar of public assistance, the "moral factor."

Williams, R. First year's working of the Liverpool docks scheme. London, King, 1914. 192 p.
Account of a successful attempt to abolish casual labor on the docks of Liverpool; the high-water mark of efforts in this direction.

See also under The minimum wage: Andrews.

VII. SAFETY AND HEALTH

American academy of political and social science. Industrial safety annals, v. cxxiii, No. 212. Concord, 1926.
Forty-two papers on the industrial safety problem. Includes sections on: (1) The need for safety in industry. (2) The organized accident prevention movement. (3) Safety code development and enforcement. (4) Safety in specific industries. (5) Accident prevention for certain hazards. (6) Educating the workers in safety. (7) The relation of safety, compensation, and rehabilitation.

American association for labor legislation. American labor legislation review. Quarterly, 1911-.
Contains up to date material on a wide range of legislative labor problems. (See annual indices for safety and health subjects.)

Anderson, Adelaide Mary. Women in the factory. New York, Dutton, 1922. 316 p.
Women's work, the legislation pertaining thereto, and the factory inspection problems involved, discussed by a former chief lady factory inspector of Great Britain.

Aub, Joseph C.; Minot, A. S.; Farrhill, Lawrence T.; and Reznikoff, Paul. Lead poisoning. Baltimore, Williams & Wilkins, 1926. 265 p.
Technical study made at the Harvard medical school.

Baker, Elizabeth Faulkner. Protective labor legislation, with special reference to women in the state of New York. New York, Columbia university, 1925. 467 p.
Study of the history, administration, and results of certain labor laws. Concludes that the modern trend is toward protective legislation for both sexes alike.

Eastman, Crystal. Work accidents and the law. New York, Charities publication committee, 1910. xvi, 345 p.
Chapters on the "Personal factor in

industrial accidents," "Distribution of the burden of income loss," and "The effect of industrial fatalities upon the home."

Fuller, Raymond G. Child labor and the constitution. New York, Crowell, 1923. 323 p.
Discussion of the extent of child labor and its social and legal aspects. Contains extended bibliography.

Hackett, J. D. Health maintenence in industry. Chicago, Shaw, 1925. 477 p.
Valuable detailed information on industrial safety and sanitation problems.

Hayhurst, Emery R. Industrial health-hazards and occupational diseases in Ohio. Columbus, Ohio state board of health, 1915. 438 p.
Classification of industries and a study of the causes of hazard in each, including dust, lighting, ventilation, sanitation, fatigue, poisons.

Hutton, R. M. Lead poisoning. Toronto, James, 1923. 304 p.
Compilation of the main known facts concerning the causes, incidence, prevention, recognition, and treatment of lead poisoning. Prepared for the Ontario board of health.

Illinois. Commission on occupational diseases. Report. Chicago, 1911. 219 p.
Authoritative treatise based on original investigations by experts with general description of the work, discussion of principles of effective legislation, text of proposed bills, suggestions for cards of instruction for employees in dangerous trades, provisions of protective laws in states of the union and in European legislation.

International congress on hygiene and demography. Transactions of the 15th international congress, Washington, Sept. 23-28, 1912. 6 v.
V. 1, Part II contains article on "Industrial accidents and trade diseases in the United States," by Frederick L. Hoffman, pp. 763-803. V. 3, Part II on Hygiene of occupations contains a collection of papers dealing with various phases of occupational hygiene. Among the subjects considered in their relations to industrial hygiene are child labor, tenement house manufacturing, and industrial accidents.

International labor office. Bibliography of industrial hygiene. Geneva, quarterly, 1923-.
Exhaustive international bibliography of current literature in this field.

.....Documents of international labor conferences. Geneva, 1919-.
Stenographic record of proceedings, conventions, and recommendations adopted, questionnaires issued, and answers thereto, etc.

.....Industrial and labour information. Geneva, weekly, 1922-.
Contains brief notes on labor news throughout the world, including legislative developments.

.....Industrial Safety. Survey. Geneva, bimonthly, 1925-.
Articles dealing with industrial safety problems.

.....International labour review. Geneva, monthly, 1921-.
Contains valuable articles, reports, and legislative notes relating to labor problems.

.....Legislative series. Geneva, yearly, 1920-.
Contains translated texts of important laws and regulations pertaining to labor adopted in various countries.

.....Occupation and health. An encyclopedia of hygiene, pathology, and social welfare. Geneva, 1925-.
Pamphlets containing technical studies on occupational diseases and their prevention. Published intermittently, or in yearly volume edition.

.....Official bulletin. Geneva, 1920-.
Quarterly publication (formerly more frequent) containing texts of official documents and information on official action pertaining to the office, the conventions, etc.

.....Studies and reports, series F, industrial accidents and hygiene. Geneva, 1921-.
Special studies on industrial hygiene and safety problems.

Keeling, Frederic. Child labor in the United Kingdom, a study of the development and administration of the law relating to the employment of children. London, King, 1914. 307 p.
Gives minimum standards required for entrance to dangerous trades.

Kober, George M., and Hanson, William C. Diseases of occupation and vocational hygiene. Philadelphia, Blakiston, 1916. xxi, 918 p.
Basic data, by experts in their respective fields, on the character, grav-

ity, causes, and prevention of occupational diseases.

Kober, George M., and Hayhurst, Emery R. Industrial health. Philadelphia, Blakiston, 1924. 1184 p.
A revised edition of the earlier "Diseases of occupation and vocational hygiene," by Kober and Hanson.

National child labor committee. American child. Quarterly, 1912-1922; monthly, 1922-.
From 1912-1918 called Child labor bulletin. Dealing with prevalence of child labor, special occupational hazards, and enactment and enforcement of protective legislation.

National council for industrial safety. Proceedings of safety congresses, 1912-.
Articles on fire, accident, and occupational disease prevention, effective legislation, and organization of efforts to promote safety.

New South Wales. Board of trade. Report on white lead as used in the painting industry. Sydney, Gullick, 1921. 778 p.
Embodies the results of a special inquiry undertaken in order to determine the government's position on the proposed international white-lead convention.

New York. Department of labor. Special bulletins. Albany, 1914-.
Special bulletins dealing with many industrial safety and sanitation problems and with child labor, women's work, etc. (For full list of titles see covers of recent bulletins.)

.....State factory investigating commission. Reports, 1912-1915.
Results of investigations into fire hazard, tenement labor, occupational diseases, sanitary conditions, and accident prevention in mercantile and manufacturing establishments.

Occupational mortality statistics. Experience of thirty-four life insurance companies upon ninety-eight special classes of risks. Compiled and published by the Actuarial society of America. New York, 1903. xiv, 479 p.
Experience of leading life insurance companies with regard to specially hazardous occupations and groups of persons.

Oliver, Thomas. Dangerous trades: the historical, social, and legal aspects of industrial occupations as affecting health, by a number of experts; edited by Thomas Oliver. London, Murray, 1902. 891 p.
Authoritative discussions by specialists of international reputation.

..... Diseases of occupation from the legislative, social, and medical points of view. London, Methuen, 1908. xix, 427 p.
Comprehensive clinical and industrial descriptions.

..... Health of the workers. London, Faber & Gwyer, 1925. 226 p.
Condensed treatment of occupational-disease problems by a well-known author of more extended works in this field.

Persons, Charles E.; Parton, Mabel; and Moses, Mabelle. Labor laws and their enforcement. "Unregulated conditions in women's work," pp. 131-155. New York, Longmans, 1911.
Conditions of work in rubber, cordage, and twine factories, and instances of violation of health laws.

Price, George M. The modern factory. New York, Wiley, 1914. xx, 574 p.
Safety, sanitation, and welfare in the work-places as affected by private effort and by legislation.

Resnick, Louis, and Carris, Lewis H. Eye hazards in industrial occupations. New York, National committee for the prevention of blindness, 1924. 247 p.
A handbook for safety experts and industrial operators.

Schwedtman, Ferdinand C., and Emery, James A. Accident prevention and relief. New York, National association of manufacturers, 1911. xxxvi, 481 p.
An investigation of the subject in Europe with special attention to England and Germany, with recommendations for action in the United States.

Thompson, W. Gilman. The occupational diseases, their causation, symptoms, treatment, and prevention. New York, Appleton, 1914. 724 p.
Detailed study of causes and symptoms, with methods of treatment and prevention.

Tolman, William H., and Kendall, Leonard B. Safety; methods for preventing occupational and other accidents and disease. New York, Harper, 1913. 422 p.
The philosophy of safety, and suggestive descriptions of the need for and success of preventive devices.

United States. Bureau of Mines. Bulletins and technical papers. Washington, Govt. print. off., 1910-.
Studies on extent, causes, and prevention of mine accidents and diseases of the mining trades.

.....**Bureau of labor statistics.** (Bureau of labor, 1895-1912.) Bulletins. Washington, Govt. print. off., 1912-.
Series on women in industry, industrial accidents and hygiene, labor laws of the United States, labor as affected by the war, and safety codes, contain material on safety and health problems. (See last pages of recent bulletins for full list.)

.....**Children's bureau.** Bulletins and charts. Washington, Govt. print. off., 1912-.
Series on child labor and industrial problems of child welfare contains material on safety and health. (See list of publications published by the bureau for titles.)

.....**Coal commission.** Report. Senate doc. No. 1955, 86th Cong., 2d sess.) Washington, Govt. print. off., 1925. 5 v.
Contains, among other things, reports on safety in anthracite and bituminous coal mining.

.....Monthly labor review. Washington, Govt. print. off., 1915-.
Contains valuable articles on safety and health problems.

.....Report on condition of woman and child wage-earners in the United States. (Senate doc. No. 645, 61st Cong., 2d sess.) Washington, Govt. print. off., 1910-1912. 19 v.
Discusses the working hours and hazards in the cotton textile industry, clothing, glass, silk industry, and laundries.

.....Report on conditions of employment in the iron and steel industry in the United States. (Senate doc. No. 110, 62d Cong., 1st sess.) Washington, Govt. print. off., 1911-1913. 4 v.
V. 3 treats of various factors affecting the health and efficiency of the working force, such as heat, speed, and severity of work. V. 4 treats of accident rates, relation of night work and long turns to accidents, and organization for safety.

.....**Women's bureau.** Bulletins. Washington, Govt. print. off., 1918-.
Studies of working women and their problems.

.....68th Congress, 1st session. House judiciary committee. Report on child labor amendment to the constitution of the United States. (Report No. 395.) Mar., 1924. 21 p.
Favorable report. A brief for federal action.

.....68th Congress, 1st session. Hearings before the house judiciary committee on the proposed child labor amendment to the Constitution of the United States, Feb. and Mar., 1924. (Serial No. 16.) Washington, Govt. print. off., 1924. 307 p.
Contains valuable data on child labor conditions as well as on the nature of the forces supporting and opposing the amendment.

Watkins, Gordon S. An introduction to the study of labor problems. (Chap. VIII, "Child labor." 26 p. Chap. X, "Human waste in industry." 20 p. Chap. XXV, "Labor legislation." 29 p.) New York, Crowell, 1922.
Brief treatment of the college text type.

VIII. SOCIAL INSURANCE

Alden, Percy. Democratic England. New York, Macmillan, 1912. xii, 271 p.
Accounts of insurance against sickness and old age in England, together with references to insurance legislation in Australia, pp. 122-165.

American association for labor legislation. American labor legislation review. Quarterly, 1911-.
Contains up-to-date material on a wide range of legislative labor prob-

lems. (See annual indices for social insurance material.)

.....Standards for workmen's compensation laws. Revised ed. Jan., 1925.
Essential features of satisfactory law, with annotations showing states already possessing such provisions.

American medical association. Social insurance. Report of the Special committee of the American medical association for 1919. Chicago, Council on health and public instruction of the American medical association, 1919. 59 p.
Treats sickness as a social problem and discusses universal workmen's health insurance as a means of distributing the cost and providing improved medical care. Urges physicians to take constructive part in shaping pending legislation.

Andrews, John B. Limitations of occupational disease compensation. (American labor legislation review, Dec., 1918. v. 8:311-315. Also reprint.)
Shows that inclusion of occupational diseases under workmen's compensation laws would meet only slight fraction of the sickness among wage-earners.

.....The protection of family life through accident prevention and compensation. (Reprint from Annals of American academy of political and social science, Sept., 1925. 9 p.)
The social effects of workmen's compensation legislation described with comments on the shortcomings of existing American laws and standards yet to be obtained.

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